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30TH THOUSAND EDITION

The Palace of the Sun

AND

HAWAII'S BURNING MOUNTAIN

ILLUSTRATED

BY

LEIGH H. IRVINE

AUTHOR OF

"The Struggle for Bread," "Told in Whispers," Etc.

WITH THE COMPLIMENTS OF

THE OCEANIC STEAMSHIP COMPANY

1896

REPUBLISHED FROM THE JUNE, 1894, SUPPLEMENT TO
THE CROWN LIBRARY, NEW YORK

AUTHOR'S NOTICE.

The author of these sketches respectfully invites attention to the fact that his services are at the disposal of such firms as desire to have him write descriptive pamphlets and general advertising matter.

He takes pleasure in stating that during the past ten years he has done a vast amount of high-class advertising writing for many commercial firms, railroad and steamship companies, and land syndicates.

For full particulars concerning the cost and details of writing, editing and revising all kinds of advertisements, address

LEIGH H. IRVINE,
SAN FRANCISCO,
CALIFORNIA.

128202

The Volcano of Kilauea.

THE VOLCANO of Kilauea, the greatest active volcano in the world, is situated at an elevation of 4,000 feet on the southern slopes of Mauna Loa, on the Island of Hawaii, about two hundred miles from Honolulu, the capital city. It is fourteen miles in a direct line from the sea, and thirty miles from Hilo on the north and Punaluu on the south, the two ports at which tourists land to visit the crater. Kilauea is not, in the form of the standard geography volcano, a cone vomiting fire, smoke, and lava, but is a great sink, three miles in diameter, in a plain, with nearly perpendicular walls, varying from three hundred to six hundred feet in height, which in places are broken by debris slopes. The bottom of the sink, or "floor of the crater," is a mass of gnarled, twisted, black lava, comparatively level, and gradually rising to a central point of main action. This main action is usually in lakes of molten lava, varying from one hundred feet to half a mile in diameter. In these lakes the lava is continually boiling in a furious manner, throwing up jets and fountains of lava to a height of seventy-four feet, dashing against the banks in fiery waves and throwing up clouds of molten spray, making one of the grandest, most awe-inspiring sights on earth. Although these lakes are visited by thousands of visitors, no accident has ever occurred.

There are two ways of getting to the volcano. One is by the Wilder Steamship Company's steamer "Kinau," which leaves Honolulu every ten days, and, touching at Maui, runs around the northern coast of Hawaii to Hilo. Good hotel accommodations can be had at Hilo. There is a good carriage road through sugar-cane fields, magnificent tropical jungles, and fern-tree forests for a distance of thirty miles through to the Volcano House. This beautiful carriage drive has been completed at Government expense.

The other route is by the Inter-Island Steam Navigation Company's steamer, "W. G. Hall," which leaves Honolulu every ten days, coasting along Maui and the southern coast of Hawaii to Punaluu. There is a fair hotel at Punaluu, owned by the Volcano House Company.

The Hawaiian Islands are only six days from San Francisco and eleven days from New York. The fine steamers of the Oceanic Steamship Company of San Francisco sail twice a month to and from Honolulu. The steamship "Australia" of this line sails to and from Honolulu only, making the round trip in twenty-four and twenty-five days; the downward voyage being but six days. The through Australian line, comprising three steamers, the "Alameda," "Mariposa," and "Monowai," touches Honolulu both outward and homeward, and through passengers to the Colonies frequently avail themselves of the privilege of stop-over at the Islands.

Under a late arrangement with the Occidental & Oriental Steamship Company and the Pacific Mail Steamship Company, whose steamers touch in at Honolulu about every five weeks, through tickets to Yokohama and Hongkong or vice versa are made available via Honolulu, and passengers may proceed to Honolulu on the Oceanic Steamship Company's steamers. This exceedingly favorable arrangement with the Japan and China lines draws a large proportion of the through travel via the Islands.

The single fare to Honolulu is $75, or $125 for the round trip; round trip to the volcano from San Francisco and return, via Honolulu, including hotel accommodations and other necessary expenses, for a period of five weeks, $225. For five cents in postage stamps a copy of picturesque Hawaii will be mailed to any address, as also time-table and other information pertaining to the "Island Paradise," by writing to J. D. Spreckels & Bros. Co., 138 Montgomery Street, San Francisco.

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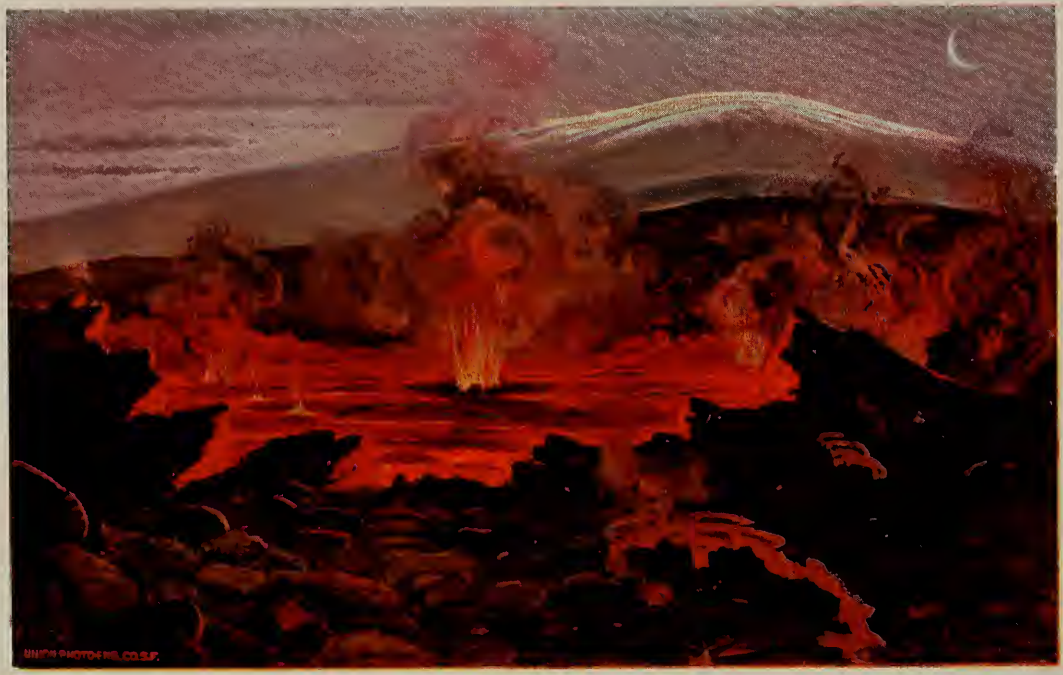

HALE-MAU-MAU, The House of Fire. VOLCANO OF KILAUEA, HAWAII.

30th THOUSAND EDITION

THE PALACE OF THE SUN

AND

HAWAII'S BURNING MOUNTAIN

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The Rainbow Islands.

I spent the winter of 1893 and the spring of 1894 in the Hawaiian Islands, land of eternal June. While there my mission was, in part, to write of that interesting country and its wonders, for I was a newspaper correspondent.

The following pages contain three portrayals, which originally appeared in the New York Sunday *Sun* of May 6 and May 13, 1894. The description of Kilauea was also printed in pamphlet form by the Volcano Company, of Honolulu, and an edition of 20,000 copies was soon exhausted. I am, however, continually in receipt of letters from all parts of the world, requesting me to mail copies of the pamphlet to various addresses. To comply with such requests, and to supply the demand for like descriptions, which comes from the thousands of tourists that annually visit the Islands, I have decided to embrace the three sketches in one volume.

I take occasion here to return my heartfelt thanks to the people of the beautiful Rainbow Islands for the pains they have taken to give my humble efforts a wide and appreciative circulation. Whatever value others may

attach to these descriptions, it affords me much satisfaction that those who are most familiar with the sublime sights portrayed have been best pleased with the pages which follow. In concluding this brief introduction, I take occasion to say that I heartily agree with Mark Twain, and gladly re-echo his eloquent statement that—

> No alien land in all the world has any deep, strong charm for me but that one; no other land could so longingly and beseechingly haunt me, sleeping and waking, through half a lifetime as that one has done. Other things leave me, but it abides; other things change, but it remains the same. For me its balmy airs are always blowing, its summer seas flashing in the sun; the pulsing of its surf-beat is in my ear; I can see its garlanded craigs, its leaping cascades, its plumy palms drowsing by the shore; its remote summits floating like islands above the cloud-rack; I can feel the spirit of the woodland solitude; I can hear the plash of its brooks; in my nostrils still lives the breath of flowers that perished twenty years ago.

LEIGH H. IRVINE,

The Press Club of San Francisco, June, 1894.

NOTE.—The San Francisco *Traveler* of November, 1895, contained a fine illustrated reprint of "Hawaii's Burning Mountain," and its appearance here is by courtesy of *The Traveler.*

VOLCANO OF KILAUEA, 1893.

Reproduced from "THE TRAVELER," S. F., Nov., 1895.

The Palace of the Sun.

I.

[The reader should bear in mind that Haleakala, or the Palace of the Sun, is the largest extinct crater in the world. It is on the island of Maui, and is reached over a tortuous and rocky mountain trail, which culminates at a height of 10,000 feet above the ocean. It has not been active within the memory of man. The scene of grandeur beheld from the summit of the great mountain wherein the giant slumbers, is one of unequaled sublimity. The mighty pit, into which New York City could be thrown, presents a marvelous picture of beauty, silence and desolation. All climes and vegetations border its cloud-reaching sides. The account which follows was written at Olinda on March 30, 1894]

In the old legends of India the first men ate of the earth and found it delicious. They were thrilled by sun and moon and stars, and in the diamond-clear mornings and halcyon sunsets they saw the symbol of God. There is not so much simple faith and poetry in the busy world of shams to-day, but if a man would be thrilled with wonder and inspired with thoughts of the eternal; if he would forget the narrow, artificial and curtailed life of cities, and become a part of the elemental world, let him go to the island of Maui and climb 10,000 feet above the level of the sea to the Palace of the Sun, which is a slumbering volcano into which America's metropolis might be dropped without overcrowding the area.

The sovereign mountain wherein Haleakala sleeps like a dead giant—its every rent and mound and conformation a history of tremendous energy—is about 20 miles from Spreckelsville, the largest plantation in the world; but when one climbs gradually up the mountain side until he has reached the rugged home of wild goats and aboriginal cattle, the 40,000 acres of sugar cane surrounding Spreckelsville do not look much larger than a town lot, and before the apex of the mountain is reached the land and ocean in the background are obstructed by great banks of clouds, which lie far beneath the observer. He forgets the struggles of native guides and pack horses, and begins to survey the marvelous scenes spread in all directions beneath his entranced vision.

There is on the way a delightful summer residence known as Olinda, a quiet and picturesque rest for the weary, which nestles on the sloping mountain, about four miles below the spot from which tourists view the ancient prison wherein the god Maui chained the sun until he promised to give the Hawaiian Islands their bountiful light and heat. The four miles from Olinda to the crest of this great mountain are the longest four miles in the Hawaiian Islands; for the road is continually washed away by mountain torrents, the air is thin and unsubstantial as the fabric of a dream, and the solitude has a greater pressure to the square inch than any barometer can measure.

I have ridden and climbed afoot over many weary miles in my time—amid Kansas cyclones, about Niagara in winter, and through the Jesse James country at night—but the most weird and oppressively lonesome journey I ever made was last week's moonlight ride from Olinda to the Palace of the Sun. The trip must be made at night, because elves of the valley and wraiths of the mysterious mountain vanish at the first peep of morning, and the fairies that people the marvelous crater, where once the orb of day dwelt a prisoner, depart soon after the appearance of dawn.

The latch string at Olinda hangs within reach of presentable people, though no one lives in the house. Its dread silence is in keeping with the solitude of the sombre mountain. Within are many evidences of prosperity, culture and unequaled hospitality—as seen in neat furniture, bed clothing, books, and signs suspended from chandeliers, saying: "Please make yourself at home, but be careful about matches!"

But when one leaves Olinda he bids farewell to familiar scenes and enters a realm more fantastic than the subtle Midsummer Night's Dream of Shakespeare—provided he has a sure-footed horse. It is awkward to have a stumbling animal break one's reveries, and possibly ribs, by sudden missteps over the furrows and bowlders, which are called a trail

out of courtesy, and by a supreme effort of the imagination.

In the thin air of the rare altitude extending from Olinda to the mountain top the stars look double their normal size, while the moon bursts into a sheen of glory and burnishes the clouds in strange and charming tints. These spectacles need not alarm anyone, however. They are not freaks of Haleakala, or ominous signs, but merely the everyday dress of nature, the normal phases of her phenomena in this neighborhood.

There is nothing in the appearance of the wild cattle, or in the solid masses of rock and earth which surround one in all directions, to suggest that this vast mountain once had the misfortune of losing its bowels; that a convulsion of nature, or volcanic eruption in ancient times, robbed it of as much land as would make a county—and that this prehistoric loss was nothing less than the disappearance of earth enough to leave a chasm 3000 feet deep and 30 miles in circumference,—but such are the facts; and it is well worth the journey to see just how a big mountain looks after it has belched forth so much territory.

The pilgrim finally reaches the edge of Haleakala—before daylight if he is sensible! To his left is a cave beneath a pinnacle of ragged rocks, and before him the crater. The entire circumference of the silent pit is surrounded by mountain bowlders and cathedral-

shaped cliffs, with here and there a gap into which people can walk, and from which they can look upon the sublimest spectacle on earth—a new world of lights and echoes, valleys and steep mountains 3,000 feet below; rainbows and sun-kissed clouds everywhere, rolling in from the ocean wastes and encircling the clear-cut outlines of lava-red peaks, which project from the floor of the crater; mountains within mountains, craters within the great crater, a mimic world hemmed in by a circle of towering peaks 10,000 feet above the foaming sea.

Whatsoever things endure for ages, while the temples and habitations of men crumble away and return to original dust, impress the mind with awe. Here are processions of clouds from away out on the surging ocean, pouring through a great gap in the mountain side, an opening that was once a floodgate for lava. Through that chasm the clouds have been rushing for thousands of years, until their mists and storms have worn away gigantic bowlders and polished the mountains, which suddenly glisten like dark rubies when touched by the rising sun. Over yonder are dancing rainbows and purple clouds whose beauties have formed and dissolved for countless ages. Probably that gallery of swift forming pictures in the air was rich with fantastic forms and colors before the life of man on earth began. Nature here shifts the

scenes and changes the tones forever, without noise or monotony; for the sun is always on time, mists eternally rise from the billowy main, and the air wafts changing clouds on wings that never grow weary. Just as the winds blow, just as the earth rolls, the myriad beauties of Haleakala each day form beneath Maui's great tropical mountain and melt away in the solitudes, unseen by human eye.

At midnight and early morn alike, the Palace of the Sun is a place for meditation. Its sublime silence beneath the quiet stars and ripe moon is a poem that awakens the noblest impulses of the soul, and one stands entranced as he views the vast area embraced within the ancient crater—an arena once covered with surging billows of melted lava, but now silent as the sky—as if the spirit of Fire had painted it all in immortal colors that sunshine and storm can never wash away. And, rising above all, is the eternal mystery of the dead abyss—its history forever hidden within its sublime and speechless depths!

There are many echo cañons in the Palace of the Sun—places where the voice plays fantastic pranks, as if to make one think he held communion with beings hidden in secret caverns, or that shadow musicians sang from the clouds. Musical sounds are reproduced more readily than others by the spirits that dwell in the caverns and cliffs of this weird mountain. Let the voice roll forth clearly in

some round, full, musical tone, and the cañons will sing back the tune again and again to the fifth echo—the last as if from the rose-tinted clouds, or from the blue peaks of distant mountains, so that the effect among the rainbows and purple colors is altogether charming.

Over the dead volcano three spirits ever hover—Beauty, Silence and Desolation. The enchanting scenes everywhere abounding and forever changing are wholly new to the eye, as if a majestic Eden of mystery had suddenly come to light in the hush of Maui's imposing wonderland. Through rising waves of morning air the mountains within the crater lift their dreamy peaks as if refreshed by the night winds; and the clouds are whirled into banks, shoals, peaks and fantastic cathedrals as they rush through the historic gap that leads to the ocean. Every form is kissed by the tropical sun of early morn. Some of these children of the sky have peach-blow tints, while here and there bars of gold or billows of pearl appear. These temples of the air grow richer every moment from the birth of dawn until the ruddy light of day dissolves them in its glistening sheen.

Dawn is the poet's hour at Haleakala, for every object of nature is then silvered or purpled in the growing light, according to its elevation and capacity for absorbing colors. The sublime in nature is seen here as much as at Niagara or in the Alps, but the chiseled

mountains and changing lights have been wrought on a larger masterpiece in Haleakala, and amid more desolate wastes of silence and grandeur, than in any land known to man. In some phases the aspect of Maui's wonderful Sun Palace suggests the moon, where empty oceans and towering mountains have slumbered in solitude for ages, unbroken by the sound of voices or the throb of busy life.

Hawaii's Burning Mountain.

C.S.L.

II.

[The active volcano of Kilauea, on the island of Hawaii, is thousands of times larger than Vesuvius, which is a mere pigmy in comparison. Travelers who have seen the great volcanoes of the world say that Kilauea is incomparably the grandest of them all. It is seldom quiet, its usual appearance being that of an overflowing lake of fire embracing an area of nearly twenty acres, a fiery pit on a rolling plain. It was unusually active when I saw it, March 12, 1894.]

Pele, the fire goddess, is alive and the volcano of Kilauea has been more active this week than for many years. When news reached Honolulu last week that many rivers of lava were bursting into tongues of flame and rushing from the overflowing banks of the greatest volcano in the world at a record-breaking speed, and that over-adventurous visitors were being terrified by seeing its angry billows consume entire acres over which they had recently passed, I hastened to the scene to behold the tremendous spectacle of a mountain-side in flames—a mountain one hundred and twenty-five times larger than Vesuvius. I can almost write now (10 P. M.) by the light of the hissing fountains of molten lava three miles away.

Like many other sight seers, I resolved to remain away from the caldron's edge and to

view it only at the safe distance of a high bluff, half a mile away; but my good resolutions were soon broken, for there is something about the awful inferno which makes daredevils of grave men and timid women alike, and draws them inevitably to the very brink of the great pit, which the Kanakas have aptly named Halemaumau, or the House of Everlasting Fire.

Before I visited this famous volcano I had read scores of descriptions of it—some by such celebrities as Mark Twain, others by famous geologists like Dana; but none in the entire list commenced his word-painting until he had reached the pit itself. If the average person enjoys being dropped into the crater as if from a balloon he differs from me, for which reason I prefer to take you over every step of the road, so that you may know the metes and bounds of the Hawaiian hades before you fall under its strange spell.

The village of Hilo (pronounced Heelo) is the starting point. Hilo is near latitude twenty north, on the shore of the Pacific Ocean, a small village of flowers and trees built amid gentle hills. No spot on the western hemisphere, and probably no place except Ceylon, can equal its rainfall record of nearly 200 inches a year. To maintain its reputation in this line the region affords the visitor a tropical shower of an inch or two every other day. The sunshine of the interim, moreover, is

always more or less liquid. At Hilo, I clambered into a heavy thoroughbrace—a small, red species of Concord coach, drawn by four horses. The winding road to Kilauea lies to the southwest for 31 miles, terminating at the Volcano house, which is 4,000 feet above the ocean. The last 25 miles are through a dense and picturesque tropical forest, which abounds in ferns, native woods and vines, broken by occasional clearings made a few years ago for coffee plantations. The coffee trees are now large and many of them are laden with berries which glisten not unlike cherries in the greater sunlight of the uplands. Through occasional openings in the forest—after a ride of two hours—the breaking surf of the ocean was visible 10 miles behind us and 2,000 feet below the coach. The air became cooler and perceptibly lighter when we had traveled 15 miles.

Suddenly two snow-clad mountains became visible as we got within a few miles of the Volcano house—Mauna Loa, toward the west and Mauna Kea, away to the northwest. Breezes from the north refreshed us here like the shadow of a great rock in a weary land, and the shining crests of eternal snow formed a striking contrast to the luxuriant tropical vegetation around us. From the Volcano house, a well-appointed two-story hotel in a beautiful vine-clad yard, we beheld forests and hills in all directions except that vast expanse

which might roughly be called the western half of a circle of which the hotel formed the central point.

Before the party with which I traveled explored the great basin included in that southwestern wonderland we were shown some of the mischief made a few years ago by the Titanic forces which rent the sloping plain of Mauna Loa and ripped the rock-ribbed bluffs and earth in every direction from the Volcano house. The strange spectacles abounding on the bluffs are second only to the fires below—a fine interlude to Kilauea itself!

There is, for example, one ragged ravine running to the eastward, which terminates two miles from the hotel. It is probably twenty feet wide, and no plummet has ever sounded its depths. It is, however, only one of the many bottomless ravines which abound in the neighborhood. The palm of one's hand is not more thickly furrowed with lines than is the earth surrounding the Volcano hotel on the edge of this Kilauean wonder. One is made aware of the existence of many of these rents by the sulphuretted vapors and hissing steam —but where one puffs and blows forth its hot gases a dozen slumber without the slightest warning of their existence. Indeed, the most dangerous cavities are often covered by ferns, flowers, creeping vines and semi-tropical mountain shrubbery which carpet chasms that terminate many miles below.

A few years ago the proprietor lost a valuable dog, which wandered from the beaten trail and was never seen again, though the echoes of the thud were heard for a minute or two as his body struck the sides of projecting ledges far below. In a similar manner two horses once escaped from Mr. Lee's barnyard and dropped into a pit which terminates in regions of eternal fire. As their bodies pounded against the cavern's ledges the thundering echoes were not unlike what Homer describes as the re-bellowings of the awful ocean storm.

If you ever visit Kilauea do not stroll from well-marked paths to gather the delicious *ohelo* berries which ripen temptingly a few feet away. The roots of the vines whereon they grow probably cling to the edges of yawning chasms which are covered by foliage; but if Darwin's theory of the thickness of the earth's crust is correct an attempt to gather one small bunch of berries might cost you a trip of twenty miles through an opening in the theoretical crust.

The Kanakas are wiser than all the scientists who have been coming to the House of Eternal Fire since Professor Dana's first visit in 1841; because none of the scientists agree, while the Kanakas are united agnostics, who persistently aver that the goddess Pele alone understands the pits and mysteries of the Kilauean region. Professor Dana once explained to a wise old

Kanaka that the centre of the earth was all a liquid fire, whereupon the Hawaiian said: "How do you know? Have you been there?"

"No, of course not," replied the august geologist.

"Then I do not believe you," was the laconic answer. Since no two men of learning seem to agree about this volcano the Kanaka wisdom is more popular hereabouts than that of the most distinguished professors. Here classified knowledge fails, and the element of mystery hovers o'er the greatest genius not less than o'er the untutored mind. The man has not yet been born who can say whether volcanoes are caused by the earth's motion, by chemical combustion within the earth, or by any one of a half dozen supposed causes. Scientists can only outline the heaving forces—vapors, heat, hydrostatic and other gravitational pressure, after which their services are over, however much their beautiful theories may serve to amuse themselves on rainy days.

Now for a descent to witness the great spectacle itself, of which all preliminaries are the merest side shows!

The Volcano house is at the northeast edge of the cavity in the mountain side known as the great crater, whose circumference is nearly 10 miles. The descent into this weird region begins about 200 feet southwest of the hotel, and, though quite abrupt, the path is wide enough for a horse and it winds down, down

gradually for a mile. Along the road there is much beautiful foliage, and not the slightest suggestion of violent forces slumbering or in action. Suddenly you reach the limit of plant and animal life, and before you stretches a bleak expanse of lava, formed into mountains and billows of congealed rock, which have cooled and stopped in myriad flows, doubtless the accumulation of centuries—some decomposed, worn and ancient, others fresh as the morning. Yonder is a patch of broken, bluish lava, upheaved like an ice flow on a river, its cakes and crusts formed into hills, hollows, cones, arches and triangular shaped blocks. Look back toward the trail, and ragged cliffs and perpendicular walls from 500 to 800 feet above you tell the story of your descent. Everything on this vast floor is more silent than the Dead Sea, and apparently solid as Gibraltar, for you can see through chasms that the lava beneath your feet is anywhere from 30 to 100 feet thick. Some of these rents are bridged, and by peeping down where the sunbeams shine you will behold ferns climbing toward the light. Your first impression is that the floor is smooth and practically level, but you soon learn that your zig-zag western march will carry you over many steep and frozen lava waves, and gradually upward toward the active lake of fire, which is 400 feet above the lowest eastern floor of the pit. On this side and that are deep ravines and sulphur-colored holes,

once puffing with expanding vapors, but now at rest. And as you proceed the lava grows warmer under your feet, while steam and sulphur fumes escape through occasional blow-holes and gigantic cones.

"What is that heap over yonder?" I asked the guide.

"Those are the ruins of the telephone house," he replied, "which was burned in a lava flow last week."

A close view shows that a telephone wire terminates by a pile of ashes near a fresh flow. A torrent of red-hot lava recently passed over the lake's edges and the telephone house was immediately consumed amid its boiling waves. This spot is two and one-half miles out on the journey to the lake.

The old trail was now abandoned, for here and there it had been obliterated by a river of lava flowing over it, cooling and forming into pools which were so convoluted as to suggest great coils of rope. The guide led the way, armed with a testing pole ten or fifteen feet long. Every tourist was provided with a substantial cane, and the guide said: "We are now getting into the second pit. Do not get scared, but follow me! Step where I step, and strike the spot immediately before you with your stick, to see whether it will hold you. If you fall do not touch the lava with your hands, for it is as sharp as glass."

We did as directed, and the entire party, consisting in part of women, followed us by gradual descents into a second crater about ten feet below, whose floor was perceptibly thinner and closer to the fire, as indicated by an increase of heat which could be felt through our shoes. The course was still a little to the southwest, though very crooked for the entire half-mile leading us to the edge of the lake—now about 200 feet above us.

I cannot compare the general shape of this second pit or crater to anything except a tea saucer upside down, and our winding path through the flows and furrows was such a crooked course as a fly might take when climbing to the upper part of a saucer thus reversed. When you consider that the uneven floor on which we walked was held in place by the gases and fluids of the restless lake of fire beneath, in spite of the many flows and cracks in the upper crust, and that the fiery lake's level was very high and at times overflowing its trembling banks, you will have some idea of the peril of our journey. The depression observable in the upper part of a reversed saucer corresponds to the lake, and the rim of the saucer to its lava banks; so that when we entered the pit there were many acres of seething liquid above us, likely to burst through any part of the sloping plain or over any section of the oblong bank. Indeed, the entire floor sank 600 feet on the night of March 7, 1891,

and the fires disappeared until the tenth of April. And an hour after we had passed over a spot pronounced unusually safe by the guide a flood of crimson lava ran across it, and that night innumerable fountains of molten rock poured over the lava banks, which crumbled when lashed by the furious waves of flame.

The half-caste guide, on being questioned, amused me by telling how he had often made narrow escapes and how the proprietor of the hotel and a recent party stood aghast when they suddenly saw a spot 40 feet square fall into the lake just after they had crossed it; how people had sometimes been compelled to run and jump for their lives, burning the soles of their shoes off as they ran; and how he had seen lakes and rivers of fire suddenly rise—lakes from which no human being could possibly have escaped. I then recalled the fact that "the floor over hell" on which we were walking was lifted into the air by a tremendous explosion that destroyed Chief Keona's army when pursued by Kamehameha in 1789, at which time a shower of rocks and cinders fell over an area of many miles, accompanied by sulphur fumes and escaping steam. The entire pit often trembles, and is sometimes severely rent by earthquakes, especially when the lake suddenly drops 40 or 50 feet, as it often does. One day there were 700 distinct shocks, and the record at the hotel shows that there were 300 violent earthquakes on the night of

March 6, 1886. At the same time the cones above Halemaumau fell several hundred feet into the boiling caldron, and for months thereafter its walls were plunged into the abyss below. That was when the lake of fire was very low, but it is now level and overflowing.

No one knows whence come the drains that sometimes empty the lake, or the surplus which makes it overflow. The lava conduits must run to a vast supply in subterranean depths, for billions of tons are required to cause the known outflows. The reservoir of lava must be in regions of eternal heat and fusion, amid disrupting and displacing forces which no violence or prodigality of Kilauea can drain. For ages upon ages the wonderful abyss has done its work of melting mountains, interrupted by occasional arrests, as on March 7, 1891, when the fires were suddenly extinguished for a month, so that Surveyor Joseph Emerson of Honolulu explored the crater's bed for 600 feet below the general level. But no one can account for these caprices!

Many visitors describe tremors and rumbling sounds, blow holes and other spectacles which were absent when I saw the lower pit; but Kilauea is never seen twice alike, because the volcano's work continually changes the displays throughout the crater.

Finally I reached the summit of the crumbling lava, cakes of which lay in all directions, intercepted here by air holes and melted there

by fresh flows. Faith led me on and on, though every time the sheet of lava beneath me gave way I had no assurance except the uniform experience of others that I should not sink into the bowels of the earth instead of a few feet; for no engineer knows what cantilever system or law of mechanics prevents the lava floor from falling into the lake and becoming billows of the blood red sea.

At last the abode of the fire goddess Pele was before me, a hissing, seething lake of fire a few feet from where I stood. Bursting areas of the molten globe rose like a swelling sea not ten feet away, and I saw the liquid plane through rising waves of hot air which glistened and trembled until the eye was pained. Steam and vapors escaped with a thunderous roar from innumerable vent holes, and tons of melted lava were tossed into the air, showing that nature can lift a mountain as readily as float a feather. At intervals the surface was struck by chilling breezes which turned the red to a sheen of silver. The desolate sea on which I gazed was upheld by the heat and gases of subterranean lava whose temperature is beyond comprehension—so great as to transform the solidest things into vapors, not unlike the sun, itself a seething globe of compressed gases.

A trip to the crumbling edge of this restless region of fire cannot be compared to anything on earth with which people are familiar, nor can one who beholds it fully comprehend its

awfulness. Like Niagara and Yosemite, like Haleakala, (Palace of the Sun) an extinct crater on the Island of Maui, into which the city of New York could be dropped—like these, Halemaumau grows on one after repeated visits and sober reflection, until finally its effect is so overpowering and awe-inspiring as to become forever the symbol of the terrible in nature, the most tremendous force ever beheld by mortal eyes. Its sixteen acres of restless flame can never be forgotten.

Many startling problems are suggested to one who stands on the edge of Kilauea's boiling abyss and tries to fathom the mystery of its origin. Does the terrific fire extend 7,000 miles below one's feet, according to the popular hypothesis that assumes the earth's crust to be a mere egg shell, and the interior a molten mass? Is the volcanic lake merely a defect or break in the earth's crust, like an air hole in a frozen sea? If so, Niagara might thunder into such a chasm for a thousand centuries without filling it, and 10,000 Pacific Oceans emptied into the awful depths where Halemaumau begins would not rise to the level of its liquid fires. On the edge of this Hawaiian sphinx, therefore, one is brought face to face with the Infinite; and compared with the energy beheld in its varied phenomena all other spectacles ever beheld on earth are dwarfed into absolute insignificance. Under such a view its quiverings become the pulse-

beats of the planet, and when its fiery seas ebb and flow in waves which sometimes disappear many miles below human vision, the mountains throb and quiver, islands of the sea are rent by earthquakes, and the submarine caverns of Pele, the fire goddess, roar like monster thunder storms in another world.

But the best view, after all, was from the sombre bluff half a mile away, a spot free from danger. There no vapors suffocated and no heat blinded me, and beneath my feet was terra firma. From there the view at night was a sublime spectacle of tremendous energy. Gigantic eruptions upheaved lurid fountains which hissed and roared forty and fifty feet above the level of the lake, mingled with various outbursts of sulphur and other vapors, as the blood-red lava dashed over the banks and overflowed the places where our party had stood but a few hours before. Great bowlders were tossed by the surging fire waves like corks or light buoys upon an angry sea. Then crimson fountains rose gently like rainbows and sank again into the bosom of eternal fire. Boiling springs and exploding acres of lava rose hither and yon in countless profusion, sending forth their hot breath as from the throat of Vulcan's forge; bubbling, hissing, thundering geysers from the inferno, whose awfulness overpowered the mind! Cataracts of liquid flame now and then plunged from the walls or fell back into the bottomless sea

whence they came—forever restless in their terrible home. The molten sea incessantly quivered as if shaken by perpetual earthquakes, its surface now covered with ten thousand torches and again bursting into a tidal wave of brilliant red—the exploding vapors dashing thunderously, as if driven by pent-up demons beneath the fiery storm. At one time I counted fifteen brilliant fountains, and suddenly thereafter the entire southern wall of the crater was submerged by a monster wave of lava, which flowed all night, forming into red rivers, and many branches which ran in all directions over the cold sea of lava that forms the great crater ten miles in circumference.

And when I awoke in the night the light from countless fire fountains and lava flows was shining on the walls and pictures like a delicate sunset effect. For centuries the mysterious fountains of Kilauea have illumined the sky and tinted the clouds which form over snow-crowned Mauna Loa, and they will play on amid sunshine and storm, beneath blazing suns and ripening moons just as faithfully as the stars keep their vigil. And so long as the dance of the hours shall go forward, for all man knows, Halemaumau's awful fires will throb and beat, like things of life and terror in contrast with the sombre peaks of Mauna Kea, snow-capped and eternal, glistening amid the stars, 10,000 feet above Pele's abode of fire.

"A Man With a Wheel"

Was formerly imagined as an individual of crude and erratic genius; a striver after the impossible; a chaser of phantom chimeras. Now, in these our days, whosoever merits the same title is regarded as a very fortunate and mentally well-balanced personage. Yet, he who rides must needs be circumspect, both as to circumstances and to appearances. The purple Toga proclaimed the nobility of the Roman Patrician; a bicycle proclaims loudly and unmistakably the mentality of its owner. To paraphrase and modernize the reflection of the immortal Shakespeare "The bicycle oft proclaims the man." The "Cleveland" bicycle is the most perfect piece of mechanism that the ingenuity and cunning of the artificer has yet evolved. It is the criterion. But, though studiously copied by makers, high grade and low, the perfection of the Cleveland frame and bearings has never been equaled. Imitation is said to be the sincerest flattery. If so, it is conceded, at least implicitly, by all makers that the "Cleveland" embodies in its construction all the elements that go to make a perfect bicycle. The "Cleveland" is the great exemplar after which all bicycles are patterned. Therefore, if you want a bicycle befitting your own dignity; if you want a bicycle whose price is consistent with its intrinsic worth

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SWINDLE!!

The City of San Francisco

DEMANDS JUSTICE!!

THE MATTER IN CONTROVERSY, AND THE PRESENT STATE OF THE QUESTION.

AN ADDRESS

To the Board of Supervisors, Officers and People of San Francisco.

THE GREAT

DUTCH FLAT SWINDLE!!

THE CITY OF SAN FRANCISCO DEMANDS JUSTICE!

THE MATTER IN CONTROVERSY, AND THE PRESENT STATE OF THE QUESTION.

AN ADDRESS

To the Board of Supervisors, Officers and People of San Francisco:

By virtue of an act of the Legislature, passed April 22, 1863, at an election held in the City and County of San Francisco, on the third Tuesday of May in that year, the proposition was submitted to the voters, for the Board of Supervisors "to take and subscribe $400,000 to the capital stock of the Western Pacific Railroad Company, and $600,000 to the capital stock of the Central Pacific Railroad Company." The Central Pacific Railroad Company is the one of which Governor Leland Stanford then was and still is President, and of which Judge Crocker is the attorney and legal adviser. The proposition to subscribe to the stock of *both* companies was submitted as *one proposition*, and was carried in the affirmative. To give some idea of the extent and the open and shameless character of the fraud and bribery used to carry the election, reference is made to the judicial affidavits and documents set forth in the following pages.

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CALIFORNIA SECTION

By the third section of the Act of the Legislature, passed April 22, 1863, it was made the duty of the Board of Supervisors simply to *subscribe* for the stock, in case the popular vote should be in the affirmative. The fifth, seventh, fifteenth and sixteenth sections of the act are given *verbatim*, as follows:

"SEC. 5. The said Board of Supervisors of said City and County, from time to time, as the work progresses on the said Railroad, and as the payment of said subscriptions to such capital stock shall be required to be made by the Board of Directors of each of said Companies, shall by order, direct the President of said Board of Supervisors, the Auditor and Treasurer of said City and County, who for that purpose, in addition to their other duties as such officers, and their successors in office, shall constitute a Board of Commissioners, to be styled the "Pacific Railroad Loan Commissioners" of said City and County, as such Loan Commissioners, to issue bonds, in the sum of one thousand dollars each, for such amount of such subscriptions to said capital stock as said Board of Supervisors may direct. Said bonds shall draw interest at the rate of seven per cent per annum from the date of their issue, and the principal thereof shall be made payable on a specified day, to be named in said bonds, which shall be thirty years after the date of their issue, at the office of the Treasurer of said City and County, both principal and interest payable in United States gold coin, dollar for dollar; the interest accruing on said bonds, shall be due and payable semi-annually, so long as such bonds are outstanding and unpaid, and shall be made payable on a specified day, to be named in coupons, at said Treasurer's office; said bonds shall be signed by the President of said Board of Supervisors, and the Auditor and Treasurer of said City and County, as such officers and ex-officio "Pacific Railroad Loan Commissioners," and when so signed shall be presented by the President of said Board of Supervisors to the Clerk of said City and County, who shall countersign the same as such Clerk, in the presence of a quorum of such Board, at a meeting thereof; and it shall be the duty of said Board of Supervisors to cause the fact of such countersigning of said bonds to be entered upon their journal,

together with the number, date, and amount of each bond so countersigned by the Clerk; and upon the countersigning of said bonds, it shall be the duty of said Board of Supervisors to cause the seal of said City and County to be affixed to each bond, and appoint a committee of their number to deliver said bonds to the said Railroad Company, to whom the same shall be issued; and it shall be the duty of such committee to take a receipt from the Secretary of such Railroad Company for the bonds so delivered by them, setting forth the number, dates and amounts of the bonds so delivered, and report the same to the Board of Supervisors of said City and County.

SEC. 7. The bonds issued from time to time in payment of said stock subscriptions, by virtue of the provisions of this act, and at least an equal amount of any other funds that may be obtained by said companies; or either of them, from other stockholders, or otherwise, or that may be furnished and supplied by the contractors, who are, or may be engaged in the construction of said roads, or either of them, for said companies, shall be expended, from time to time, as the said bonds are required to be issued, in the actual construction and equipment of said railroads. It shall be the duty of the Secretary and Chief Engineer of each of said Companies, from time to time, as the said bonds are required to be issued, to make reports, under oath, in writing, and lay the same before the said Board of Supervisors, of the progress of the work, and the amount thereof done, and performed, as near as the same can be ascertained, on each of said railroads. And if, after the issuance of the first instalment of said bonds to either of said companies, there should be at any time, any failure or refusal on the part of such company, in the expenditure of said bonds, with other funds, in the mode and manner provided by this section, in the construction and equipment of such road, then, and in that event, the said Board of Supervisors may, at their option, withhold any future payments on such subscription to the capital stock of such company, and shall not thereafter be liable to any further calls for assessments thereon; and if so declared by said Board of Supervisors, such subscription to the stock of such company shall be held void and of no effect, and

such company shall be liable to said City and County for any amount that may have been previously paid on such subscription at the time of such failure and refusal, recoverable in any Court of competent jurisdiction.

SEC. 15. The said Board of Supervisors shall have authority to authorize a committee of any one or more of their number, or any other persons, to cast all votes representing the capital stock so subscribed by them; and they shall, by order made for that purpose, have full power to sell, transfer, and assign the said capital stock, or any part thereof, so taken by them under the provisions of this Act, whenever, upon a submission to the qualified voters of said City and County, at any City and County, or general election, of a proposition to sell the same, a majority of the votes cast thereon shall approve of such sale.

SEC. 16. The Board of Supervisors shall have all the rights and powers appertaining to any other subscriber to such capital stock, and shall receive all the dividends, issues and profits arising from such subscriptions to said capital stock, and shall set apart and transfer the same, from time to time, to the said Loan Fund, to be applied by the said Loan Commissioners to the payment of the interest on the bonds issued as herein provided, and the redemption of the principal thereof, in the manner provided by section eleven of this Act; and after the full payment of said bonds, and the interest on the same, the said dividends, issues and profits, arising from such stock subscription, shall be applied as follows: One-third part thereof to the School Fund of said City and County, and the remaining two-thirds to the General Fund."

In January, 1864, the Board of Supervisors sent a Committee and Clerk (Mr. Jerome Lincoln) to Sacramento to examine into the books and transactions of the Central Pacific Railroad Company, in which they were required to make the heavy investment of $600,000. Gov. Stanford, and other officers of the Company, refused to allow the Committee or Clerk to examine their books. (See McCoppin's affidavit.) The same sort of concealment was subsequently practiced towards the Supervi-

sors of Placer county, which had subscribed $250,000 to the capital stock. (See affidavit of Jas. R. Rogers, President of the Board of Supervisors of Placer.) The transactions of the officers of the Company being thus covered up, it was rendered impossible for the Supervisors, or other officers of San Francisco and other counties, to understand their position and rights in the premises.

On the 4th of April, 1864, the "Compromise" act was passed by the Legislature. At that time it was generally understood that San Francisco had four or five hundred thousand dollars of surplus money in her treasury. It is not asserted that that bill (for the Compromise act) was initiated for the special benefit and relief of the officers of the Central Company, but it may be stated as a fact generally known, that ready money was what Governor Stanford and others connected with the management most needed.

In reference to this Compromise act, it is to be noted that there is nothing in its *title* that would indicate that it had any reference to this Central Pacific Railroad affair. It is an act in one section, with *five* subdivisions, the first four of which empower the Board of Supervisors to increase the pay of the Fund Commissioners' Clerk, the Assessors' Clerk, to compromise a certain claim to an engine house lot, and transfer the hospital building to the Board of Education. Then suddenly changing the subject, the 5th subdivision empowers the Board as follows:

"*Fifth.* To compromise and settle all claims upon the part of the Western Pacific Railroad and the Central Pacific Railroad, *for cash or other security*, in place of *bonds*, claimed by said companies of said City and County under an act to authorise the Board of Supervisors of the City and County of San Francisco to take and subscribe one million dollars to the capital stock of the Western Pacific Railroad Company and the Central Pa-

such company shall be liable to said City and County for any amount that may have been previously paid on such subscription at the time of such failure and refusal, recoverable in any Court of competent jurisdiction.

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cific Railroad Company of California, and to provide for the payment of the same, and other matters relating thereto. Approved April twenty-second, eighteen hundred and sixty-three : *provided*, that the power to make such compromise shall rest in said Board of Supervisors, only after and in case said Board of Supervisors shall be compelled by final judgment of the Supreme Court to execute and deliver the bonds specified in said act."

Under this provision it will at once be seen that the Board of Supervisors are not authorised to surrender their *stock*. If they should think proper to subscribe, the City could at any time, without asking the Company, transfer her stock and exempt herself from all further liability, even for assessments ; for she would have *all* the rights of other subscribers, of which this is one. But the Board were authorised simply to give "cash or other security in place of *bonds*," which under the act of 1863 they were required to issue from time to time, in *payment* for the stock subscribed, and which could only be demanded by *assessment* made *pari passu* with those levied upon the stock of other subscribers.

No sooner were the Board invested with this power, than they were besieged by the President and other officers of the Railroad Company for relief. The Board, however, could not act until compelled by a final judgment of the Supreme Court to deliver the said *bonds*. Then they could compromise by giving "cash or other security *in place of them*." Accordingly, on the seventh day of June last, a *mandamus* from the Supreme Court was issued, directed to the Board of Supervisors, commanding them to subscribe for the stock, and containing an additional clause as follows :

"And we further command you that you make an order directing the Board of Commissioners, styled in said act the Pacific Railroad Commissioners, to issue the bonds of said City and County to the said Pacific Railroad Company, *upon the conditions as required and specified in said act ;* and further, that you do in all respects per-

form and comply with each and all the provisions, requirements and directions of said act."

If the paper or process thus sent to the Board is authorised by the judgment, it must be a most remarkable and unprecedented judgment. It might as well have commanded these officers faithfully to perform all their official duties, or, to save further trouble to the courts, it might, upon the same principle, have gone one step further, and commanded them to behave rightly through their whole lives. It is most obvious that a judgment or mandate, which simply commands obedience to the law, adds nothing to the force of pre-existing obligations, and that so far as regards any specific act or duty, not enjoined without admitting any condition or excuse, it cannot properly be considered as final or peremptory; consequently, the Board as yet had by the terms of the Compromise law no power to act at all. In consequence, however, of fraudulent misrepresentations, which are set forth in the documents annexed, and an entire misconception of the City's rights, the Board, at the urgent solicitation and importunities of Stanford and others, passed an order, dated June 20, 1864, the first section of which is as follows:

"SECTION 1. Four hundred bonds of said City and County, each for one thousand dollars, with interest coupons attached, dated July 1st, A. D. 1864, in all other respects in form, substance and execution such as are required by said Act first above mentioned, shall be forthwith made, executed and delivered to said Central Pacific Railroad Company of California."

The order further provided, that the bonds should only be delivered in case the Railroad Company should release the City and County from all obligation to *subscribe for stock*, as well as "all claims, debts, dues, bonds, and coupons whatsoever." It is understood that the required release was executed and tendered.

Now it is perfectly clear, first, that the Board at *that time*

had no power to make *any* compromise ; second, that the Board could not give away the stock and make a donation of nearly half a million of dollars besides. They could give no *bonds* at all. They could, in case they subscribed, give cash or *other* security *in place* of bonds, in payment for stock. It is equally evident that the Board had no power to impose upon the Treasurer or Auditor the duty or obligation to sign, or upon the County Clerk the obligation to countersign them. As well might they require the County Judge and each Justice of the Peace, or Notary Public, to sign or countersign. The duties of these officers are prescribed by law. The fact that the act of 1863 empowered and required certain officers to sign and countersign the bonds that were to be issued in payment for stock, has no bearing on the question. These Compromise bonds, even if they were to be given *in place* of those, are very different documents. The powers of the Board of Supervisors are specified in the Consolidation and other subsequent acts, and they are prohibited from exercising any but those specified. Certainly there is nothing specified in the Compromise act which would authorise the Board to impose any new duties on the County Clerk or County Treasurer. Neither the one nor the other can be required by the Board to sign any Compromise Bonds, nor can they be *empowered* by the Board to do so. If their signatures should be *voluntarily* put to them, the act *may* bind *them* for the payment, but it would in *law* be unauthorised and void as to the public—the City. A *mandamus*, however, was awarded early in September, directed to Henry P. Coon, Mayor of the City and County of San Francisco, Henry M. Hale, Auditor, and Joseph S. Paxson, Treasurer, commanding them, and all others acting under them, to issue and deliver to the Central Pacific Railroad Company the bonds specified in the Compromise ordinance. In the proceeding which resulted in the

granting of this mandate, neither the Board of Supervisors, nor the County Clerk, was made a party; consequently, neither is in any manner bound by the judgment nor affected by the mandate, as neither can be considered as acting *under* or in any manner or sense in subordination to the three officers named in the process. Nevertheless, as a piece of good policy, it was deemed expedient to make application for a rehearing in the case. The petition for rehearing, with the arguments of counsel, the proposed amended answer, affidavits and other documents, evidencing the scandalous frauds practiced upon the City, are annexed to this address, and to these papers the most serious and careful attention of every citizen and every tax-payer is solicited. These documents exhibit the present state of the question, and show, in the most conclusive manner, that the *City*, which has never yet had a hearing on this question, has *in law* a complete defence against the issuance of these Compromise bonds, or any bonds whatever, to the Central Pacific Railroad Company. The Supreme Court, which dismissed the application for rehearing on purely technical grounds, did not deem it necessary to consider or intimate any opinion upon the questions submitted to it, but left those questions open and unembarrassed for its unbiassed judgment, whenever they may come up, if they ever should, in some subsequent proceeding wherein the Board of Supervisors shall be made a party.

The following is the opinion of the Court:

"*The People of the State of California on the relation of the Central Pacific Railroad Company* vs. *Henry P. Coon, Mayor; Henry M. Hale, Auditor; and Joseph S. Paxson, Treasurer, of the City and County of San Francisco* [No. 391].—The decision and judgment in this case was rendered early in September, 1864. About the 10th of that month a written notice of such decision, as appears by proof before us, was personally served on the attorney for the respondents. On the 30th of the same

month a petition was filed by new attorneys and counsel on behalf of respondents for a rehearing. Since then, and during the present term of the Court, the relators' attorneys have appeared and objected to the hearing and entertaining of this petition, on the ground that, as the case was originally commenced, tried and determined in this Court, the judgment rendered cannot be reviewed on petition for a rehearing.

"By the amended Constitution, power was granted to the Supreme Court to issue writs of mandamus, certiorari and prohibition, and it was by authority of the Constitutional provision referred to that this Court, upon proper proceedings instituted, assumed to act in the premises. Our judgment in the case was that of a Court of original jurisdiction, and for the correction of any error which we may commit in such cases the party aggrieved must pursue the course prescribed by the Practice Act in like cases arising in the District Courts, so far as may be. It is unnecessary to refer to the particular provisions of the Act specifying the course to be pursued in order to obtain a re-examination of a case by the same Court of original jurisdiction, after one decision made therein. The course prescribed by the statute has not been followed by the respondents in this case, and therefore the petition filed cannot be entertained.

"It is therefore ordered that the petition for a rehearing be dismissed. CURRY, J.

"We concur: SANDERSON, C. J.,
RHODES, J.,
SAWYER, J.,
SHAFTER, J."

It is proper to say here, that neither the City and County Attorney, nor either of the three other counsel, who are *now* defending the City, received the written notice referred to in the opinion, nor was aware that any such notice had been served until the fact was announced in the above opinion. The gentleman upon whom the notice was served, it seems, did not deem it his duty either to act upon it himself, or communicate it to the new counsel employed, although a stay of pro-

ceedings for the purpose of allowing an application for a rehearing had been obtained as early as about the 15th of September, and then, and for some days later, it would have been in time to give notice of intention to move for a new trial, had the paper which was served, according to the usual practice, been handed over to the new counsel.* It must, however, be constantly borne in mind that the City has not yet been heard, and cannot, therefore, be prejudiced by this decision. The effect of the dismissal of the application for rehearing in the case referred to, is stated in the following opinion of counsel, which was read before the Board of Supervisors, and filed October 19th, 1864:

OPINION.

Supervisor McCoppin read the following, which was placed on file:

"To F. McCoppin, Esq.:—In reply to your question as to the effect of the decision of the Supreme Court, dismissing the application for a rehearing in the case of *The People, on the Relation of the Central Pacific Railroad Company* vs. *The Mayor, Treasurer, and Auditor, of the City and County of San Francisco*, we answer, that the petition for a rehearing was dismissed on purely technical grounds in nowise affecting the merits of the case—that there is no order of the Supreme Court to the Supervisors or the County Clerk, and that a new action will be necessary to obtain such an order—that in this new action the new and important questions raised in this matter can be fully passed upon without prejudice from the decision in the former case. We should be the first to counsel immediate obedience to any order of the Supreme Court, but in this matter there is no order binding on the Board of Supervisors, and no

*The Attorney of Record in the case has no recollection of receiving any such notice.

decision on the important questions which arise before such an order can be obtained.

"Yours respectfully,

JOHN H. SAUNDERS,
JOHN B. FELTON,
HORACE HAWES,
HALL MCALLISTER."

Notwithstanding that the mandate to the Commissioners was issued, served, and obeyed early in September, and the dismissal of the petition for a rehearing left the original judgment unchanged and unaffected, yet for some cause the Railroad Company's counsel have thought proper to get out a new edition of this mandate "enlarged and improved," by what authority it is not known. It is only known that the new paper served is unsustained by the judgment, and repugnant to the Constitution as well as to the first principles of natural right and justice. It commands the Commissioners, "and all others in authority, *or acting by, through, with*, or under" them—all in authority, that is, all officers, high and low, civil, military, and ecclesiastical—an attempt is made to bind all, even though not parties to the proceeding, and without a hearing or admitting of any defence. This cannot be done. None are bound by a judgment but parties and privies. The peremptory mandates of Courts can go *only* against those who have been summoned and heard; and those only acting *under* and in subordination to them are affected by such mandates. In this new paper an entire new clause is also contained, not one word of which was in the former mandate. Why is this? There is no new judgment. The former one is unchanged in every particular. This new clause commands the Commissioners that they and the others included, but not named—that is, "all others in authority" shall "observe and perform all the acts

and proceedings required by the said ordinance" (the Compromise Ordinance) "and the Statute in such case made and provided, to effect and complete the due and proper execution, issue, and delivery to the said Central Pacific Railroad Company of California of the said four hundred bonds and coupons described in the said ordinance." The profession will consider this form of mandamus a strange precedent. A mandate must *specify* the act to be done. To do and perform all the acts required by law or ordinance, without specifying them, cannot be commanded by any Court on earth, because, to say nothing of the legal and constitutional restrictions on this subject, every man has the right by the law of nature itself to be heard as to his duty, obligation, or power to do an act, and his reason or excuse for refusing, before it can be judicially decreed that he must do it. It is perfectly clear that the Commissioners to whom this process is directed, and who were the only parties before the Court, have no power to perform *all* the acts requisite to effect and *complete* the execution and delivery of the bonds. There is also in the new paper a clause (not in the old one) commanding them not only to execute, issue and deliver the bonds, but to *cause* them to be issued and delivered. This outrageous abuse of the process of the Court, while it must inevitably fail to accomplish the fraudulent purpose of inducing the Board of Supervisors to deliver the bonds in question, will be a proper subject of investigation hereafter. The writ of mandamus at best, in a free country, where the division of powers is recognized, is liable to grave objections. It is admitted that the Courts cannot decline the jurisdiction conferred by the Constitution, but the too fre quent use of this process has rendered it distasteful to the people. Let abuses such as the one just alluded to be oft repeated and in a little time it will be said "it stinketh."

If the Board of Supervisors made a compromise with the Central Pacific Railroad Company which was within their powers and binding on the City, it is a contract simply—nothing more nor less—the conditions of which may be enforced by an ordinary action such as is proper to enforce other contracts. In such action all the questions affecting the validity and binding force of the contract can be tried and determined. Where such a plain and adequate remedy exists a resort to the writ of mandamus is not authorized by the Statute, or by the Constitution, and it would be equivalent to a denial of justice to permit that process to be used in such cases.

It is the duty, as well as the interest, of every taxpayer and every good citizen, to look critically into the facts involved in this controversy. The Corporation—the people have a right to, and should insist upon, the use of every available defence against the liability attempted to be fixed upon the City. In doing so they exercise only their constitutional rights, in which course they cannot but receive encouragement from the Courts.

Although four hundred thousand dollars is a large sum for the City to lose, a heavy weight to be added to her present burdens, there is yet another aspect in which the subject presents itself of more transcendent importance. The moral sense of the community has been outraged by the open and notorious acts of bribery and corruption, by which it would appear from the annexed affidavits the election of May, 1863, was unduly influenced. The public character and former respectability of the persons who appear to be implicated, render those acts the more scandalous and disgraceful to the City. Such practices must not be overlooked, palliated, or excused. A stain and reproach rest upon the City. It must be wiped out. Until it is,

every good citizen must feel himself humiliated by it. Burdens attempted to be imposed upon us by bribery, fraud and corruption, must not be submitted to. It is our solemn duty, not only to resist such impositions by all lawful means, but to see that the guilty parties are brought to condign punishment. Until we have done this, we must share in the City's disgrace, and the plague spot will remain. Some say that it is better to be swindled out of four hundred thousand dollars than six hundred thousand—for all agree that the whole affair of these County subscriptions to railroads is a swindle anyhow. But it is *best* not to be swindled at all. This is the true maxim. No security for property can be enjoyed in a country where the people, as in Mexico, allow themselves to be laid under contribution by highwaymen. Robbers are most bold and insolent towards those who submit to be plundered without resistance. It is better and safest to take the bull by the horns, and not by the tail—to grapple with the robber at once, and either make an end of him, or let him make an end of us, rather than forever to live in ignominious fear of his depredations. Is there any treason greater or blacker than his who corrupts voters, and thus undermines the very foundations of free government, and does his best to blast the hopes of mankind? Every sentiment that reigns in the breast of a pure and loyal man revolts at the dark page which the events of the third Tuesday in May, 1863, have inscribed upon the annals of our City. It must be blotted out.

IN THE SUPREME COURT

OF THE

STATE OF CALIFORNIA.

THE PEOPLE OF THE STATE OF CALIFORNIA, EX REL. THE CENTRAL PACIFIC RAILROAD COMPANY,

vs.

HENRY P. COON, MAYOR of the CITY AND COUNTY OF SAN FRANCISCO,

HENRY M. HALE, AUDITOR of the CITY AND COUNTY OF SAN FRANCISCO,

JOSEPH S. PAXSON, TREASURER of the CITY AND COUNTY OF SAN FRANCISCO.

PETITION FOR A REHEARING.

FIRST POINT.

The petition sets forth that the defendants have refused to do what they had no right to do---and the mandamus orders them to do what they cannot legally do.

The petition sets forth that the defendants have refused to *deliver* or *issue* certain bonds to a committee of the Board of Supervisors or to the Central Pacific Railroad Company.

It is perfectly clear that the defendants had no authority by law to do either of these things. Their refusal therefore was right, and no mandamus will lie.

The ordinance under which these bonds were to be issued prescribes that they shall be in all other respects (excepting as to amount) in form, substance and execution, such as are required by the act of April 22, 1863. (See papers on notice for mandamus, folio 13, *et seq.*)

We must look therefore to the Act of 1863, April 22, to see what officers are authorised to execute and issue these bonds, and to whom.

The act of April 22, 1863, prescribes (see Statutes, 1863, page 382,)

First, That *these bonds shall be signed* by the President of the Board of Supervisors and the Auditor and Treasurer of said City and County, as such officers, and ex-officio "Pacific Railroad Loan Commissioners."

Second, When they are so signed, they shall be *presented by the President of the Board of Supervisors to the Clerk of said City and County.*

Third, They shall be countersigned by said Clerk, in the presence of a quorum of the Board of Supervisors.

Fourth, The Board of Supervisors shall cause

the fact of such countersigning of said bonds to be entered upon their Journal, together with the number, date, and amount of each bond so countersigned by the Clerk.

Fifth, Upon the countersigning of said bonds, it shall be the duty of said Supervisors to cause the seal of said City and County to be affixed to each bond.

Sixth, They shall then (and not till then) appoint a committee to *deliver the bonds.*

Seventh, Such committee shall take from the Secretary of the Railroad Company, a receipt for the bonds, setting forth the *number, dates, and amounts of the bonds, etc.*

This is the machinery provided by law. The three defendants in this suit have no right to issue or deliver the bonds to anyone. Their sole duty is to sign them, and it is not pretended that they have ever been asked or ever refused to sign them.

It is alleged in the petition that they have refused to deliver or issue the said four hundred bonds of the said City and County either to the committee of the Board of Supervisors or to the Company. Grant that they have refused this, what right had they to deliver or issue them either to the Company or to the Committee? By the statute, this Committee cannot be appointed until after the President

of the Board of Supervisors has presented these bonds to the Clerk of said City and County, and the Clerk has countersigned them in presence of the Board of Supervisors. So that if the Committee of the Board of Supervisors has been legally appointed, the three defendants must have signed the bonds, the President must have delivered them to the Clerk of the County, the Clerk of the County must have countersigned them in the presence of a quorum of the Board of Supervisors. In short, the defendants must have done all that the law allows them to do.

Evidently, the Committee cannot receive them until, 1st. They have been countersigned by the Clerk of the County in the presence of a quorum of the Supervisors. 2d. Until the seals have been put on by the Supervisors.

Again: What validity would these bonds have if these defendants did issue or deliver them to the Company? They would not be countersigned or sealed, nor would they be delivered by the sole persons authorized to deliver them. Both execution and delivery would be void.

The petition, then, does not set forth facts sufficient for a writ of mandamus to issue. It does not show a demand on the defendants to sign these bonds, nor on the President of the Board to present them to the Clerk of the county. That a demand and refusal must be alleged and proved, is clear.

See *Leonard* vs. *House*, 15 Geo., 473. 2 Carter Ind., 333.

But the petition does allege that the defendants refused to do what they had no right or power to do, and mandamus will not lie to compel an officer to do an act which, without a command, it would not be lawful for him to do. *Johnson* vs. *Lucas*, 11 Humph., 306. *The People* vs. *The Supervisors of West Chester*, 15 Barb., 607. *The People* vs. *The Supervisors of Greene*, I2 Barb., 217. *The State* vs. *The Judge*, 15 Alab., 740.

Again: No mandamus should be awarded against these defendants to compel them to sign. 1st. It is not alleged that they have ever been asked to sign, or refused. 2d. There is no petition that they should be compelled to sign, and no notice that any such motion will be made. The idea of signing is not even by implication comprehended in the words used. 3d. If the relator is not entitled to what he demands his motion should be denied, although it appear that he is entitled to a portion of the relief. 11 N. Y. 563; 13 Barb. 444; 1 Hill, 50; 21 Howard's Pr. R. 288; 10 Abbot's Pr. R. 233.

We contend, then, that on the clearest principles this petition, motion and writ are wholly defective and illegal, and that they cannot be cured.

Still further: It is in a case like this of the great-

est consequence, that all the officers who by law are compelled to do an act like this, should be before the Court and have an opportunity to give their reasons why they should not act. Otherwise, the right of the City might be frittered away without giving to the principal agent of the corporation an opportunity to be heard. In this case it might be contended, because a mandamus was obtained against the subordinate agents of the city, whose sole duty it is to sign these bonds, that the Supervisors themselves, the representatives of the City in this matter, whose duty it is to be present when the bonds are countersigned, to execute them by affixing the corporate seal—to register them so as to prevent frauds, were precluded from contesting the legal obligation to issue them. Suppose the law made it incumbent on a man to get a stone on which to engrave these bonds, could the whole question as to whether the City and County must by law issue the bonds be tried in a mandamus against him so that a judgment by default against such a subordinate would prejudge the whole question? It is clear that this duty of executing and delivering these bonds is one duty which cannot be tried piece meals.

Again: By the law of 1863, these defendants cannot even sign the bonds till ordered so to do by the Board of Supervisors. (See act of 1863.)

SECOND POINT.

No mandamus lies in this case, because there is no law which enjoins on the agents of the City to issue these compromise bonds. The obligation to issue them, if it exists at all, comes simply from a contract entered into voluntarily between the City and County and the Railroad Company, and a breach of this contract sounds in damages, and there is a complete remedy at law as in the case of a breach of any other contract.

According to the facts set up in the petition, the City and County acting under powers conferred upon them by the Legislature, compromised a certain claim held against them by the Railroad Company, and agreed to give the Company four hundred thousand dollars in funds. The City, through its agents, now refuses to comply with its contract —and to issue the bonds. If the City were sued for a breach of this contract, in refusing to issue these bonds, the acts of the agents set forth in the complaint would be corporate acts, and the City would undoubtedly be liable for a breach. No reason is shown in the petition why a contract to deliver these bonds should be specially enforced, and if there were any such reason the remedy would be by a bill in equity.

Suppose the corporation had agreed to compromise this claim for a sum of money, would mandamus lie to compel the payment of the sum of money? If so, why would not mandamus lie in every case where there is a coporate breach of a contract to compel a performance? If I settle a

claim and agree to give my promissory note, would mandamus lie to compel me to do it? If mandamus would not lie to compel me to do it, why would mandamus lie to compel a private corporation in a similar case? If it would not lie to compel a private corporation to issue its bonds in pursuance of a contract so to do, what distinction can be found in the case of a municipal corporation? There is a wide distinction between the case at bar and the former case in which mandamus issued to compel the Supervisors to subscribe to the Railroad Stock and issue bonds. In the latter case, the obligation was imposed on them directly by the law which left them no discretion. In this case the obligation comes from a contract voluntarily entered into between the City and the Company, and there is no law which obliges the City to issue these bonds, if it chooses to incur the ordinary consequences of a breach of contract and pay the damages caused in money. In cases of contract like this there is always a discretion on the part of the contracting party, either to deliver the specific thing contracted for, or to be answerable in damages; and this discretion can no more be controlled where a municipal corporation has violated as ordinary contract than where an individual has. (See *Goodwin* vs. *Glazer*, 10 Cal. 333; *People* vs. *Olds*, 3 Cal. 167; *Draper* vs. *Noteware*, 7 Cal. 276; *People* vs. *Thompson*, 25 Barb. 73.)

It will be seen that all of the cases in California, where mandamus has issued, proceed on the ground that the defendant has refused to perform a duty directly imposed by Statute. We have found no case where mandamus has issued to enforce an obligation not imposed by law, but springing from a voluntary contract, the breach of which can be recompensed by damages.

Another very important reason why mandamus will not lie, except in cases where the duty is directly enjoined by statute, is, that it is a summary writ, applicable only to those cases where the duty is clear; but in cases of breach of contract, there are often complicated questions of fact and law, improper to pass upon in this summary way. It appears, in this case, that the corporation disputes the legality of this contract. The question whether the contract is legal or not, is properly a question at law, cognisable in the District Courts, who are competent to apply the remedy, if the contract has been broken. Suppose the compromise in this case had been that the corporation would pay these bonds as soon as the Railroad Company had done work to the amount of one hundred thousand dollars, could the Supreme Court hear all the complicated accounts and pass upon the various disputed facts which it would be necessary to hear and pass upon? In such a case, would not the Supreme Court be intruding on the original juris-

diction of the District Court, which extends over all cases of law and equity?

The Practice Act on this subject seems to us clear.

Mandamus issues to compel the performance of an act *which the law especially enjoins* as a duty resulting from an office, trust or station.

Where does any law enjoin on these defendants the execution of these bonds? There is not even an order of the Supervisors directing them to do so. There is no statute which imposes on them this duty.

Again: There is a plain, speedy and adequate remedy at law.

Still further: Their right is a disputed one, and should be decided by an action at law.

See *Commissioner of Land Office* vs. *Smith*, 5 Texas, 470.

THIRD POINT.

We respectfully ask the attention to this point again, though it was passed upon before by the Court.

The law of April 4, 1864, authorizes the Supervisors to compromise and settle all claims upon the part of the Western Pacific Railroad, etc. There can be no claim of these Companies until after subscription. The claim arises after subscription, and not from the law authorizing and requiring the subscription.

In the case of *Aspinwall et al.* vs. *Commissioners of the County of Daviess*, 22 Howard, it was held,

in a similar case, that no right to the subscription vested in the company until it was actually made.

So held in *Covington and Lexington Railroad Company* vs. *Kenton County Court*, 12 B. Munroe, 144.

The word claim is defined by Bouvier, in his law dictionary, as follows: "A claim is a challenge of the ownership of a thing which a man has not in possession and is wrongfully withheld by another." Evidently, in this sense, the company could have no claim against the city until after subscription.

Again: The law of April 4, 1864, not only does not repeal the law of 1863, but it expressly recognizes it, and contemplates future action under it. It provides that there shall be no power in the Board of Supervisors to compromise until the Board of Supervisors is compelled by final judgment of the Supreme Court to execute and deliver the bonds specified in said act. This clearly contemplates action under the law of 1863, after the passage of the law of 1864. So that the law of 1863, making it imperative on the Board of Supervisors to subscribe to this stock, was clearly in force, unaffected by the law of 1864, after the passage of that law.

But if the law of 1863 was not repealed by the law of 1864, it is in force now, and the imperative duty is still incumbent on the Board of Supervisors to subscribe to the Railroad stock.

We have, then, these two facts: 1st. That the law making it the imperative duty of the Board of Supervisors to subscribe to the Railroad stock, is still in force.

2d. That until the subscription was completed, the Railroad Company could have no claim upon the City and County.

The Legislature could have repealed the statute, and they would have no right to complain. But, certainly, the Legislature could not deprive the Railroad Company of any claim.

Now, if the companies had no claim against the city, by reason of the law of 1863, when did they have a claim, and what would be the nature of it? Evidently, they would have no claim except for the bonds, after they had allowed the city to subscribe for the stock.

In that case the city would be the owner of the stock, and the companies would be entitled to the bonds of the city in the nature of assessments on the stock.

Again: The law of 1864 prohibits any compromise on the part of the city until the Board of Supervisors shall be compelled by final judgment of the Supreme Court to execute and deliver the bonds specified in said act. But the Board of Supervisors could not be compelled to issue these bonds until after subscription, and not even then, unless an

equal amount with their own expenditure should be spent by the companies on the roads; and then only in the nature of assessments; that is, assessments laid upon the whole stock. For, it will not be pretended that the City and County, as stockholder in these companies, could be compelled to pay its assessments faster than the other stockholders. It has all the rights of other stockholders, and among these rights, is that of being assessed equally with other stockholders, and no more.

We have, then, three conditions precedent to any obligation on the part of the city to execute and deliver these bonds.

1st. A subscription to the stock, accepted by the companies.

2d. An equal expenditure with that of the city, by the companies, derived from other sources.

3d. An assessment equal to that imposed upon the city stock upon the rest of the capital stock of the companies.

Now, this compromise cannot take place until after these conditions are complied with. The Supervisors may compromise for the bonds which they are compellable to issue, but only for those.

Again: The act, though awkwardly expressed, is explicit and unmistakable as to the nature of the claims which may be compromised. These claims may be settled in one way, and that is, by giving cash or other securities in the place of the bonds.

This is the only compromise which the Supervisors are allowed to make, to substitute for the bonds claimed by said companies, cash, or other securities; but this compromise is not allowed to be made till the time has come when the bonds are due. The bonds cannot be due till the City is the owner of the stock. Now, where in this act will you find a word which, by the most distant implication, authorises the Supervisors to surrender the stock or to refuse to take it? The law of 1863 not only provides for the subscription to the stock, but prescribes what shall be done with the proceeds—dividends, etc. How has this law been repealed or changed?

Test this act as if it were an ordinary power of attorney. Suppose I had given a power of attorney to my agent to subscribe for stock for me and give my promissory notes therefor, and afterwards sent him another power of attorney authorising him to compromise my notes by giving cash or other securities therefor, but directing him not to make the compromise until he would be legally obliged to issue my promissory notes. Would this authorize him to refuse to subscribe and to give my promissory notes for nothing? Does an authority to compromise the claim for purchase money support a rescission of the contract?

Again: This compromise is but a contract between the corporation and the companies, and the rules applicable to all contracts is applicable to this.

We have shown that, independently of the subscription, the companies have no claim whatever. Their claim must grow out of the subscription and the consequent obligation of the City to give its bonds. If there is no subscription, and until there is a subscription, the Legislature can repeal this law without legal injury to the companies. Now, prior to the subscription, what claim is there which can furnish a consideration to support any contract whatever? Suppose, in the case of a private individual, a man had peremptorily directed his agent to subscribe to a railroad stock, but the agent had not done so. Would the company, by reason of these peremptory instructions given to the agent, have any claim on the principal which could be the consideration of an onerous contract? So, in this case, the Legislature has given peremptory orders to the agents of the City to subscribe for this stock. Now, one of two things must be true. Either the City has subscribed, or she has not. If she has not subscribed, then there is no privity between her and the companies. The companies have no claim upon her. If she has subscribed, and the companies have assented to her subscription, then she is the owner of the stock, then the contract is perfected, and a power to her to compromise for the purchase bonds, by substituting cash or other securities, will not justify a rescission of that contract.

If it is said that the release from the obligation

imposed by the law to subscribe to this stock is a sufficient consideration, we answer that this obligation comes from the law itself, and does not move from the companies. Now, if this obligation comes from and is imposed by the law, what authority have the companies to release or discharge this obligation. The obligation is peremptory, provided the companies will assent to the contract. If they do assent, the City is bound by the obligation imposed by the law to subscribe. If they dissent, then the City is not bound, because the Legislature cannot force a contract on the Railroad Companies. But when the Legislature has passed a law rendering it obligatory on the corporation to subscribe to the stock, if the companies assent to the subscription, can they delegate to the companies the legislative power to repeal that law, provided the City will pay to the companies a certain sum? This would be to leave it optional with the Railroad Companies whether a certain law should be in force or not. If the companies do not assent to the compromise, the law of 1863 is in full force. The City must subscribe. If they compromise, the law is repealed.

After all, what have the companies agreed to do, or done, to support this promise to pay four hundred thousand dollars? Substantially this: they have agreed not to enter into a contract with the City, which the City was bound to make; not from

any consideration moving from any one, but because the law told her she must. Now one of two things must be the case, either that law was obligatory or it was not. If it was obligatory, the law could not give to these companies the power to destroy the obligation. The obligation could be destroyed only by a repeal of the law which imposed it, and the Legislature could not delegate the power to repeal a law to a private company. If it was not obligatory, then there was no consideration for the contract.

The sole power then which this Company had, was either to assent to or dissent from this contract which the law made obligatory on the City. But what consideration can be founded on a refusal to contract at all? What consideration of any kind has the City received when these companies say to her "you need not subscribe to our stock?" Why should she subscribe? Because the law rendered it imperative upon her. But if the sole obligation to subscribe came from the law, how can these companies release or discharge that obligation?

The truth is, whatever obligation was imposed by the law to subscribe to this stock was not in the interest of these companies, and conferred no claim upon them. This obligation was purely a matter between the State and City, and it would seem to be clear that the discharge of a purely statutory obligation, imposed by the Legislature, cannot be a

consideration to support a contract, and the power to discharge such an obligation can be wielded only by the Legislature.

The law, then, of 1863 is still in force. It has not been repealed by the Legislature. It cannot be repealed by these companies. The release given by the companies to the City is simply ludicrous. If it is anything, it is a release of an obligation imposed by a statute of this State to subscribe to certain Railroad stock. If there is such a statutory obligation, how can the will of a private corporation release it?

Again: If we support this compromise as an agreement to release the City from the statutory obligation to subscribe to the capital stock of these companies, in consideration of four hundred thousand dollars, let us see to what extent we contradict the Statute of 1864.

First. We contradict it in this: It is not a compromise of all claims on the part of these companies for cash or other security, in place of bonds claimed by said companies—which is the only compromise authorized by the Act. But it is a wholly different thing, nowhere authorized by the Act. It is a release of the City from her obligation to subscribe to stock in consideration of a certain amount of bonds.

Second. We contradict the Statute in this: The compromise cannot be made till the Supervisors are compelled by final judgment to *execute and deliver* (not to

become liable for, but actually to execute and deliver) the bonds under the Act of 1863. Now, if the City is released from all obligation to subscribe for the stock, the very contingency on which this compromise making power is granted can never arise. No obligation can be imposed on the Supervisors to execute or deliver a single bond under the Act of 1863.

Third. We contradict the Act in this: The simple compromise authorized by the Act, is to substitute cash or other securities for certain bonds—to be issued under the Act of 1863. This compromise destroys all claim whatever for the bonds under the Act of 1863, and prevents any possibility of the companies ever claiming them—so far as these bonds are concerned there is nothing to substitute cash or other securities for—for the very condition of the compromise is, that this claim for bonds under the Act of 1863 shall never have any existence. But what is compromised is the obligation arising out of a law still in force, and recognized in this very Act as still in force to subscribe to stock.

Fourth. We contradict the Statute in this: It authorizes a settlement of certain claims. The compromise does not dispose of any claims. For the companies never can have any claims by this compromise. The very contingency on which a claim could arise, the subscription to the stock, is prevented.

Fifth. We contradict the Statute in this: The claims are defined in the Statute. They are the claims to the bonds to be issued under the Act of 1863. These claims are to be compromised. The compromise adjusts a

wholly different matter, and renders it impossible that there ever should be any claims to these bonds to settle.

Sixth. We enlarge the Statute far beyond what its clear language means. There is not one word in it which directly, or by the most remote implication, authorizes the Supervisors to give up the stock which the law of 1863 calls for, which was to be the consideration of these bonds.

Seventh. We contradict the Statute in this: It authorizes simply a compromise of a claim. The pretended compromise makes a pure donation.

This compromise contradicts in every way the clear language and meaning of this Statute, and we submit that the Court cannot go outside of a Statute, and outside of the clear meaning of its language, to introduce into it powers which cannot be contained in any words which the Legislature has made use of, and which are in direct contradiction to the terms which it has chosen to convey its meaning.

FOURTH POINT.

Under the former point we contended that the Legislature had not authorized the Supervisors to make a donation of the money of the City to these companies—that this compromise is wholly without consideration, and consequently void. We now go one step further and contend—

That it is not in the power of the Legislature to authorize the agents of the City and County to make a donation of the money of this Municipal Corporation for any such purpose.

The proposition that must be contended for on the other side, to support this compromise, is, that a donation may be made from the mnnicipal funds of a municipal corporation to private companies, organized to construct a railroad commencing a hundred miles from that corporation and running through the State in a direction opposite to the municipal corporation.

It will be seen in this case, that there is no provision that this money should be even spent on the road. It is absolutely given to these private companies, without condition. So that if they choose to divide it in the nature of dividends among their stockholders, they have a full right to do so. It is a simple donation to private companies. There is no stipulation that it shall be used on any public work. What is to be done with it is entirely at the discretion of these companies. On this ground alone, it seems to us, that this donation is absolutely void.

But we go one step further: Even admitting that this donation is for the purpose of building a Railroad from Sacramento to the western line of the State, and that the building of this road is of public utility, we contend that the City and County of San Francisco cannot be taxed for any such purpose.

If this road is of public utility, and consequently a fit object for the expenditure of the public moneys, it is obviously a work of general and not local public utility. Or if it were conceded that it is a work of local public utility, then it would be a work of local public utility to those counties through which it passes, and the counties of San Mateo, San José would be as

much benefited as the County of San Francisco, and should be taxed as much in proportion as San Francisco.

But clearly, a great railroad traversing the entire State cannot in any sense be said to be local to any particular county. The test as to whether a work is of local or general utility, is clearly not whether it will confer some benefit on one locality, but whether it will confer a benefit on the entire State, and so incidentally on all of the cities and counties of the State.

The Supreme Court, the Legislature and General Government are of local utility to San Francisco, but would that fact justify a tax which should throw on San Francisco the entire burden of supporting them? San Francisco is so connected with the entire State, and with the neighboring States, foreign as well as American. that a line of steamers cannot be sent from France to Panama without being of local advantage to it. A tunnel cannot be put in the ground at Washoe, but San Francisco is benefited by it. A road across the Plains adds to her wealth and population.

In this sense, whatever increases the facility of communication between different parts of the State, or between this State and other states, or between this State and foreign countries, is of public utility to San Francisco, just in the same sense as this railroad is of public utility to her. Indeed, if this donation can be supported on the ground that a local advantage accrues from this work to San Francisco, then San Francisco, or any county in this State, could be compelled by the Legislature to construct the entire railroads, steamers,

and telegraph lines of the State. This conclusion is as inevitable as it is shocking.

Now, the Constitution of California is remarkable in the jealousy with which it guards these very powers of infringing the natural rights of its citizens, and of taxation. It has not thought it safe to entrust them even to the Legislature itself. It provides,

1st. That taxation shall be equal and uniform throughout the State.

2nd. That general laws shall have a general operation.

3rd. That the enumeration of rights shall not be construed to impair or deny others retained by the people.

So that, first, the natural rights of the people are not placed at the mercy of the Legislature; second, the taxing power is granted to the Legislature with the strict condition that it shall not be used unequally.

It will be seen that the case of *Sharpless* vs. *The Mayor of Philadelphia*, 21 Penn. S. R. 147, was decided under a Constitution which contained some of these restrictions, either as to the reserved rights of the people, or as to the equality of taxation, and great stress is laid upon that fact in the opinion.

The California cases heretofore decided, were all cases in which the proposed Road had its terminus in the county taxed. No case in California decides that a municipal corporation can be taxed for a State Road whose terminus is a hundred miles from the corporation taxed, and whose advantages are merely incidental.

The New York leading cases, *Clark* vs. *The City of Rochester*, 24 Barb. 446—*Bank of Rome* vs. *The Village of Rome*, 18 N. Y. 32—*Grant* vs. *Courter*, 24 Barb.

232—and the other leading cases in that State, go on the principle to use the words of one of the Judges, that a court cannot say that a railroad *terminating at* a village or city is so foreign to its public interests, and those of its inhabitants, that it is beyond the legislative power to authorize the village or city to become interested in its construction. See *Bank of Rome* vs. *The Village of Rome.*

In the leading case of *Clarke* vs. *The City of Rochester*, 24 Barb. 481, it seems to have been conceded that the work for which a municipal corporation may be taxed must be a local work, and that if it is a work of general utility, the tax must be generally assessed.

The limits of this Petition prevent us from going into this great question at length. But we refer the Court to the ably reasoned case of the *State of Iowa* vs. *The County of Wapello*, decided by the Supreme Court of Iowa, in 1862, as the most ably reasoned case on the subject, and the only one we have seen decided under a constitution, like that of California.

13 Iowa, (Withrow,) 393.

In addition to the points above submitted, we ask to put in an amended answer, setting forth

1st.—That the consent of the people of the City and County of San Francisco, to the subscription, was obtained by the fraud of the Railroad Company, and its agents.

For affidavits as to the character and extent of the fraud we refer the Court to the affidavits in the appendix.

2nd.—That the compromise was obtained through a misrepresentation of a most important fact—that the

subscription of six hundred thousand dollars was due and payable at once, with back interest for a year, (see affidavit of Bell) and that the Company had prevented the Supervisors from finding out the true state of the case, by a fraudulent concealment of the books of the Company, (see affidavit of McCoppin) but that in truth and in fact, but a small portion of the bonds were due, as the Company had only assessed the other stockholders for a small portion of their assessment, and could not assess the City and County for more than they assessed the other stockholders.

The proposed amended answer is set forth in full in the appendix, to which we refer the Court.

It is clear that we should have the right to put in this amended answer. The former answer raised only questions of law. Mandamus is an original proceeding in the Supreme Court, and there is no appeal. Even in the District Court, when a case has been heard on questions of law alone, it is customary to grant time to enable issues of fact to be raised. In this case, these facts have all been discovered since the hearing—they have been concealed from us by the relator, and they are fatal to his case.

It is clear from principle and authority, that if the consent of the people of San Francisco was obtained by fraud, or if the compromise was obtained through the misrepresentation of a material fact, that both subscription and compromise are void as against the party guilty of the fraud.

In other States where these subscriptions have been allowed, the consent of the corporation has been given

through Common Councils, Grand Jurors, and other small bodies of men. In this State, laws have often been passed, granting franchises upon the consent of the property holders affected thereby. It is evident, that if in these cases fraud has been used, the consent would be void. In the case of *The City of Oakland* vs. *Carpentier*, 13 Cal. 541, it was held that if defendant, by conspiracy with others, procured them and himself to be elected to the Board of Trustees for the purpose of defrauding the town of its property and franchises for his benefit, the whole transaction is illegal. And if defendant, as member elect of said Board, neither resigning nor qualifying, took advantage of his position to advance his personal interests at the expense of those of the corporation, it was a fraud, for which equity will hold him responsible.

The same defence of fraud was set up in *Commonwealth* vs. *Commissioners of Alleghaney County*, 8 Casey, 232.

FIFTH POINT.

The Statute of 1864 authorizes the Supervisors "to make "such compromises only after and in case said Board of "Supervisors shall be compelled by final judgment of the "Supreme Court to execute and deliver the bonds specified "in said Act." The Supreme Court has not, by final judgment, ordered the Board of Supervisors to execute and deliver any bonds at all--and it does not appear, in any of the proceedings in this suit, or in the preceding suit, tha there is any legal obligation on them to execute or deliver a single bond. But it does appear by the affidavit of Rogers --see last page of petition for rehearing--that the Company has never called in more than ten per cent of the capital stock subscribed and issued to the Stockholders, and that of this ten per cent a large portion has been fraudulently expended.

The Act of 1863 authorized the City and County of San Francisco to subscribe to the capital stock of the Company with all the rights and obligations of other stockholders—among these rights is the right to be equally assessed with the other stockholders—so that if the City had been assessed its fair proportion it would not have been liable for more than sixty thousand dollars in bonds—even supposing that their calls for sixty thousand dollars were legal and *bona fide*.

We contend that this compromise can only be for bonds legally due from the City to the Railroad, and that the Supervisors have no authority to compromise for these bonds any faster than the obligation to execute and deliver them accrues.

It will be seen at a glance that the present compromise, regarded in any business light, is a monstrosity. The outside liability of the City to this Company for assessments, supposing all the assessments had been put upon this stock, could only have been six hundred thousand dollars. This compromise proposes to pay at once nearly seventy per cent of this entire contingent amount —to run the risk of no more assessments being made— and to give, in addition, the stock itself. We suppose that any corporation ever formed in California would gladly have accepted seventy per cent of its capital stock paid in advance in lieu of all assessments and have issued full paid stock therefor.

As a business proposition, no man would, we think, regard it otherwise than absurd. Now, is it authorized by the law?

In the first place, let us examine the nature of the claim which was to be compromised.

It is a claim which certain railroad companies have for bonds to be issued in the nature of assessments upon certain stock. These assessments became due under the general Railroad Law, which is as follows—see Act of 1861, p. 613:

"It shall be lawful for the Directors of such Company to call in and demand for the stockholders the sums subscribed, *in equal installments*, of not more than ten per cent."

This and the other provisions of the Railroad Act render impossible any assessment on any particular stock—which is not laid on all. All assessments must be equal. It is too clear to need argument, that these companies could not call upon the City to pay up its entire subscription and leave the other stock altogether unassessed.

We are aware that the companies themselves seem to have acted on an impression that the instant the City had subscribed for this stock, it became at that moment liable for the whole amount of the bonds, whether the rest of the stock had been assessed or not. This impression apparently comes from the language of Section 7, of the Act of 1863, which is as follows:

"The Bonds issued from time to time, in payment of said stock subscriptions, by virtue of the provisions of this Act, and at least an equal amount of any other funds that may be obtained by said companies, or either of them, from other stockholders, or otherwise, or that may be furnished and supplied by the contractors who

are, or may be, engaged in the construction of said roads, or either of them, for said companies, shall be expended from time to time as the said bonds are required to be issued in the actual construction and equipment of said railroads."

This language has been interpreted to mean that the whole of the bonds might be immediately called for and used with the sole condition that when they were used, at least, an equivalent of other funds procured from other sources should be used. A construction which would lead to this absurdity that the companies might call in at once the whole six hundred thousand dollars from the City, without assessing any other stock, and then mortgage their works for six hundred thousand dollars more, and thus procure the equivalent funds by sacrificing the City's subscription.

But a slight examination of the statute shows very clearly that this provision, that there shall be at least an equal amount with that furnished by the city spent upon the road from other sources, was intended to be an additional restriction on the use of these corporate funds to the restrictions already imposed by law on calling in assessments, and was not intended to expose the city, when she subscribed for the stock, to the necessity of paying up in full when the other stock was not assessed at all. The provision, taken in connection with the general Railroad law, means that the funds issued from time to time, in payment of said stock subscriptions, shall not be used until there has been at least an equal amount furnished from other sources; but it does not mean to say that these bonds can be called in any faster than other subscriptions. This is clear:

1st. From the provision in the act that the city shall subscribe to the capital stock.

2d. That for such subscriptions these bonds shall be received at par, dollar for dollar, (see section 4.)

3d. From section 5, which provides in substance that these bonds shall be issued from time to time as the payment of said subscriptions to such capital stock shall be required to be made by the Board of Directors, etc.

4th. From section 7, which provides in what event the Board of Supervisors shall not be liable for future calls for assessments.

8th. From section 8, which provides that the Board of Supervisors shall have all the rights appertaining to any other subscriber to such capital stock.

9th. From the fact, that while in the act the city is made simply a shareholder in the company, there is not one word indicative of any intention on the part of the Legislature that her stock should be assessed in any different manner from the other capital stock; and that the manner and mode of calling in these assessments is evidently left to the general law, which prescribes equality.

It is clear, then, that these bonds could be called in from the city no faster than the other assessments on the rest of the capital stock subscribed for; that by this act the Legislature had imposed on the city the ordinary burdens incident to the ownership of stock, but no greater, and that it had not conferred on the city the

sad privilege of paying all the assessments—leaving it equal with the other stockholders, who pay nothing, only in the benefits to be derived from the stock.

This, then, is the nature of the claim which is to be compromised; it is a claim for bonds to be issued as assessments on stock, which assessments are to be equal. The companies can have no claim for bonds excepting as often as the rest of the capital stock is assessed for an equal amount, and then only to an equal amount with the other assessments. Now, it is clear that these companies could not be said to have a claim for any bonds when there was no assessment, and then no greater claim than for the amount assessed. Suppose the company had levied an assessment for ten per cent of its capital stock, and the city had paid up this assessment, could the companies, in any legal sense, be said to have any claim for any more bonds, until another assessment was levied?

Yet the statute, in clear, unmistakable language, says that what may be compromised is the *bonds claimed by said companies*. What are the bonds claimed by this company; when does this claim arise; to what extent have they a claim for bonds?

Is not the answer clear. This claim for bonds arises whenever there is an assessment on the capital stock, and is co-extensive with the assessment; and where there is no assessment or where the assessments are paid, there is nothing that can be called a claim.

The claim for bonds which is to be compromised, is the claim for bonds assessed, for beyond the assessments there is no claim for bonds.

Again, it is incidental to all subscriptions for stock, that all liability, even for assessments, disappears when the stock is sold.

The principle of law is clear. "When an original subscriber to the stock of an incorporated company who is bound to pay the installments on his subscription from time to time as they are called in by the company, transfers his stock to another person, such other person is substituted not only to the rights, but to the obligations of the original subscriber, and he is bound to pay up the installments called for after the transfer to him. The liability to pay up installments is shifted from the outgoing to the incoming shareholder."

Angell and Ames on Corp. Sec. 534.

Now, by Section 15 of the Act of 1863, page 385, the Board of Supervisors has power to sell this stock whenever a majority of the voters assent to such sale. In other words, the corporation has full power to sell this stock.

Now, suppose after this levy of ten per cent assessment, the corporation voted to sell this stock, where would be the claim for the balance of these bonds? The city is only a shareholder, with the same rights as other stockholders, and among these rights is the right to sell and to rid one self of all liability for future assessments. So that it does not follow from the fact that one is the owner of stock, that he will ever be liable for future assessments.

Again: In the case of this particular subscription, the Supervisors had the power, if certain conditions were not complied with, to declare the subscription void and

to refuse to pay any further assessments. See Act 1863, page 385, section 17.

Now, taking all these provisions together, and it follows that these companies not only had no claim for any bonds other than those actually assessed, but that there was not even a liability on the part of the City for any such bonds, and non-constat there ever would be. There was, therefore, no claim which could be the subject of a compromise, except the claims for bonds actually assessed.

Now, suppose I give a man my power of attorney to settle all claims which a certain company has against me for assessments. Would this authorize my agent to compromise for all future assessments which might be laid on the stock after I should cease to be the owner thereof—to pay my money for assessments which had never been levied, and which, probably, never will be levied. Suppose an assessment of ten per cent has been levied on mining stock, would my agent, under the authority supposed above, have the right to pay seventy per cent of the face of my stock, merely because if subscriptions to that amount should thereafter be levied, and if I should continue to be the owner of that stock, and if the assessments were legal, I might become liable? How does this Act, which is purely a power of attorney authorizing the compromise of certain assessments on certain stock, receiv · different construction? What is this claim for bonds be, nd the actual assessments? Is it a claim at all? Is it a liability, absolute or contingent? It is no more a liability or a claim than the taxes which may next year be levied on my real estate, if I

keep it, are a liability, or a claim. It is possible, if I keep the land, and the Government doesn't change, and the laws remain the same, that there will be a liability, but the liability is not incurred—the claim does not exist. Now, this act only authorizes the compromise of an existing claim. Its language is: What may be compromised, is the bonds claimed. Now, take any owner of stock, whether he has paid up the one hundred cents on the dollar or not, if he has paid up all that is due, has the company any claim upon him? If I buy in a company which is paying large dividends and will never be probably assessed, there is still this theoretical possibility of an assessment being laid, but could the company be said to have a claim on me, or could a liability be said to exist merely because of this imaginary possibility?

We contend, then, that even if there were nothing in the statute but the language above commented on, authorizing the Supervisors to compromise the bonds claimed by the company, that the Supervisors would not be authorized to compromise the contingent possibility that there might at some future time be bonds claimed through assessments not yet laid, and a possibility of a liability not yet incurred.

But the statute has not left the matter here. In language which we contend does not admit of a doubt, and leaves no ambiguity open to construction, it specifies distinctly what shall be the nature of this claim for bonds which is the subject of compromise.

The power does not exist until the Board of Supervisors shall be compelled by *final judgment to execute and deliver* the bonds specified in said act.

Now, as we have already seen, from the fact of subscription to stock, there does not arise necessarily any claim for assessment. There have been mining companies which have paid large dividends to the subscribers from the moment of the subscription, and other companies which have supported themselves. Could it be said that in these cases the fact of subscription created any claim for assessment. So in this case no claim for bonds accrued to these companies from the subscription. Such claim only accrued by reason of the assessment equally made on all the stock.

It follows from this that a final judgment of the Supreme Court that the Supervisors should subscribe to this stock is in no sense a judgment at all that they should execute and deliver a single bond. Suppose after such a judgment the Supervisors should refuse to execute or deliver a single bond, would they be precluded by this judgment that they should subscribe from giving their reasons why, subscribers though they are, they refused to issue a single bond? It is said that this judgment orders them to make, execute and deliver the bonds under the conditions prescribed in the Act of 1863, and that this may be considered a final judgment that they should execute and deliver those bonds.

This would be indeed a singular final judgment which would leave open to litigation every condition on which its obligation depends. Written out, the judgment would read thus: If an assessment is laid upon the capital stock of the Pacific Railroad Company, and if this assessment is legal, and if all the conditions in a certain act are complied with, and if you are still the

owners of this stock, then in that case execute and deliver these bonds. Whoever heard of a mandamus which, passing over all present obligations, enforces a duty which has not yet arisen on the condition that future events happen in a certain way and under certain circumstances. You might as well mandamus a Governor at his inauguration, to perform all the executive duties imposed on him by law throughout his career. Such a mandamus could only be justified on Franklin's plan of saying grace over the whole barrel of pork to save time.

Now, we appeal to the conscience of the Court whether there has ever been an application before them, under the Act of 1863, to compel the Board of Supervisors to execute and deliver a single bond. Whether any fact has been alleged in any case from which an obligation to execute and deliver a single bond has followed. Whether the one single issue before them has not been: whether the Supervisors were or were not obliged to subscribe to this stock. Whether that has not been the single issue adjudicated.

If this is so, then, unless a judgment to subscribe to stock is a judgment that the whole amount subscribed for shall be immediately paid up, assessment or no assessment, how can it be pretended that this judgment was a judgment that the Supervisors should execute and deliver these bonds, or any of them, or one of them. The obligation to execute and deliver bonds is an obligation wholly distinct and separate from the obligation to pay assessments. The latter is not contained in the former, and does not depend on the same conditions. The duty of doing the one does not imply the duty of doing the other.

Now turning back to the Act, its language is not that the Supervisors shall have the power to compromise when the Supreme Court has compelled the Supervisors to subscribe to the stock, nor when it has compelled them to place themselves in such a position that they will be liable for future assessments provided the companies perform their part of the contract and the City has not sold its stock; but *only after and in case said Board of Supervisors shall be compelled by final judgment of the Supreme Court to execute and deliver the bonds specified in said Act.*

If, now, the city issues these compromise bonds, will it not be a fact that cannot be disputed that it has done so in the teeth of this Act. That it has done so before there was any final judgment of the Supreme Court compelling the Supervisors to execute and deliver one single bond?

Is there any ambiguity here? Can the Supervisors compromise before there is a final judgment of the Supreme Court compelling them to execute and deliver certain bonds? If there were such a judgment, would not the Supervisors be in contempt if they refused to execute and deliver these bonds? Could an action to compel them to execute and deliver such bonds be brought until the duty had arisen and a compliance with it been refused? Does such a duty arise from the mere fact of subscription? Has the Court ever adjudged it the duty of the Supervisors to issue a single bond? If so, how many?

Is it not clear that after the mandamus to subscribe, the Supervisors could refuse to issue a single bond; and would not such a refusal involve questions never yet passed upon by this Court?

We contend, then, that there has been no judgment of this Court compelling the Supervisors to execute and deliver one single bond; that this Act prescribes not merely that there must be a legal duty incumbent on the Board to execute and deliver these bonds, but until that duty has been enforced by the solemn mandate of this Court, directing them unconditionally and positively to execute and deliver these bonds, no compromising power exists.

Now, if we come to the spirit of this act, as shown in this paragraph, rendering a final judgment to execute and deliver necessary before compromise, is it not clear that this provision was inserted by some one in the interest of the city, and that its clear meaning is that no compromise shall be made until all other means have failed? But have all other means failed when the city is obliged to subscribe? The statute of 1863 points out at least four different methods of avoiding the payment of assessments after subscription?

1st. By sale of the stock. (See section 15.)

2d. In case certain stipulations are not inserted into company contracts.

3d. In case the companies do not comply with the conditions of section 7.

4th. In case assessments are not laid equally on all other stock *bona fide* and for the good of the company.

Here, then, are at least four contingencies which may arise after subscription to the stock to prevent the legal duty on the part of the Supervisors to execute and de-

liver a bond—and which would prevent the possibility of any judgment in the Supreme Court to make or execute or deliver a bond.

But the framer of this Act clearly intended that the City should avail itself of all its legal remedies and yield only to legal compulsion at last. Then, and not till then, could it compromise.

It is said, however, that this inevitable construction of the unambiguous language of the statute would prevent any one compromise from disposing of this entire business—that the compromise would have to be made piecemeal.

We answer: 1st. If this were an absurdity, yet if the clear language of the statute leads to it, there is no room for construction—and such is the clear language of the statute.

2d. We answer that our construction is the only reasonable one—that the opposite theory is absurd.

We say this statute authorizes a compromise of certain claims whose extent can be appreciated—which are certain—where some idea can be formed by both of the contracting parties as to the value of the thing compromised, and what it is just to give for such an abandonment.

The other theory contemplates a compromise in the dark. It is a compromise of assessments not yet laid, whose amount depends on contingencies not to be foreseen. Here is a company which has yet levied only ten per cent assessments. There is a possibility of ninety

per cent more being levied before the stock is full paid. How much of this ninety per cent will be levied depends on accident, on the amount of stock which will be subscribed—or the economy of management. How much the city will have to pay, depends on the question whether the companies will perform their part of the contract—whether they can legally do so—whether the City keeps her stock. The fair compromise value of these possible ninety per cent is unascertained and unascertainable. Now, to compromise this claim, involves not sound sense and business judgment. It is simply gambling.

But the language of the Act is compromise and settle. How can you compromise and settle what in the nature of things you cannot estimate and judge of?

Again: Is it not an absurdity never yet heard of in business transactions to compromise and settle the possibility of assessments by giving seventy per cent of the whole amount right out?

Still further: The City has at any time the power to sell, and so get rid of the necessity of paying assessments. Now, why, if it can do this, and so get rid of its stock and its incidental liabilities for nothing, should it give up the stock and sixty per cent of all possible assessments? Is it not a mockery to call this a compromise, a settlement of claims, and that, too, when the framer of the law has so carefully protected the City as to refuse all right to compromise except under legal compulsion?

SIXTH POINT.

The Answer now put in sets up, that this compromise was made through the fraudulent representations of the Relator through its agents; that these representations were made to the Committee of the Supervisors appointed to consider the subject of compromising with the Relator in open session of the Committee; that these representations were to the effect that the whole six hundred thousand dollars of assessments were due and payable at that time, and had been due and payable for at least a year; so that the city would be at once compelled to pay the whole face of its stock with forty-two thousand dollars of back interest, making a total of six hundred and forty-two thousand dollars. See affidavit of Bell, page 5, and the sworn application for a mandamus, made by Leland Stanford. That these representations were wholly false, because the railroad company had only called in ten per cent of the subscriptions to her capital stock, and that, supposing this assessment to have been legal, the city would only have been obliged to issue sixty thousand dollars of her bonds; but that the legality of this assessment was open to controversy, from the fact that a great portion of the assessments so called in, had been spent corruptly and illegally. See affidavit of Rogers, last page of Petition for Rehearing, and the answer to 32d question, (Petition, page 35,) in which the officers of the company admit an expenditure of $75,000 for different legislative and election expenses. That the Supervisors were denied the right to examine the books of the company by the officers of the company, and so were precluded from

finding out the truth of the matter. See affidavit of McCoppin, page 85 of Petition.

In short, that the agents of the company procured this compromise of four hundred thousand dollars on representations false, and which they knew to be false; that the city owed six hundred and forty-two thousand dollars immediately, and that they, by fraudulent concealment of the true sources of information, kept the agents of the city from discovering the truth.

The general proposition of law involved in this answer, that a false representation of a material fact will vitiate any contract in favor of the party deceived and against the wrong-doer, is too clear to need argument.

That this fact as to the actual indebtedness of the city in case no compromise was made, was a material fact—in fact the material fact which led to the compromise is equally evident. It cannot be supposed that any man of ordinary business capacity would compromise a claim for sixty thousand dollars in bonds by giving therefor three hundred and sixty-two thousand dollars more than was due. If this sum of six hundred and forty-two thousand dollars was actually due when represented, then these consequences would follow :

1st. That the Supervisors could not avail themselves of the privileges granted in the act of 1863 to make void their subscription, without paying up the full six hundred thousand dollars.

2d. That they could not sell without remaining liable for the assessments already incurred.

3d. That, as the money had been already expended,

their rights as stockholders to see to its judicious expenditure, would have been useless.

4th. Their right to exact that all contracts should contain the personal exemption clause on pain of refusing to pay future assessments, would have been rendered useless—for they would be liable for back assessments.

5th. This representation, asserted as a certain fact, that the City, in any event, would be obliged to pay six hundred and forty-two thousand dollars, whereas the truth was, that ninety per cent had not been paid, and there is a great uncertainty as to whether these ninety per cent ever will be called for. Since the passage of the Act of 1863 no new assessment has been called for. So that the Supervisors were led to believe that they were compromising a certain legal claim for six hundred and forty-two thousand dollars; whereas they only settled a claim of doubtful legality for sixty thousand dollars, and a bare possibility that in case many contingencies happened, there would be a liability for five hundred and forty thousand dollars more.

In short, it was precisely the case of a mining company which represents to its stockholders that one hundred per cent has already been called in, and that his stock is liable for that amount, when in truth there have been but ten per cent of the capital stock called in, and procures a settlement with him on that basis.

This answer, then, raises a question of vital importance to this case. If the facts are as alleged, then this compromise is void. We have submitted some affidavits to show that the facts are true. The statements of Stan-

ford in his application for mandamus, the affidavits of Bell, McCoppin and Rogers, and the others. This is far from being the bulk of the evidence on this subject which we can produce, but it is sufficient to show the Court that the facts contained in the answer are susceptible of proof. Strictly speaking, the affidavits were unnecessary, as the answer raises the questions of fact. We have preferred to show to the Court how serious is the positive evidence by which this branch of our case can be supported.

SEVENTH POINT.

The answer sets up that the Relator, through its agents, corruptly and wickedly procured the assent of a majority of the votes of the City and County of San Francisco through bribery.

The affidavits on this point are full and clear. One of the largest stockholders of this Company, the owner of six hundred and sixty shares, the brother of its President, the agent of the Railroad Company for this purpose, with money procured from the Company, (see affidavit of Rogers, Answer to question 4, page 123, of affidavits, Answer to question 32d, page 128, Affidavit of McCoppin, page 85,) went through the polls, scattering money as inducements to vote in favor of the subscription; bought a large number of votes; and through the whole election day used his money profusely; now throwing it by the handful among the voters, who gathered around him in crowds; now making bargains with gangs of men to vote in a body for the subscription.

The general proposition will not be disputed that fraud vitiates an election. We propose to show that in

this case the assent of the people of the City of San Francisco was obtained by the fraud of the Relator. The Court will see from the affidavits how universally the money of this Company was used in procuring the assent to this subscription.

In this case the presumption will be invoked, which Courts always invoke, against the person guilty of a crime and fraud. No one is allowed to take advantage of his own fraud or reap any benefit from it, and if through the conduct of these men it were even doubtful whether enough votes were procured to change the result, the Court would presume that such was the case. No Court of law would tolerate for a moment the defence that, though a man had bought votes, and thrown his money by handfuls at the polls, and hired a crowd to cheer, and all this with the openly avowed intention of carrying an election through fraud, that a mere failure to trace and prove the exact extent of the influence thus exerted, and the effect thus produced, would give to the party guilty of the fraud the advantages thus corruptly gained.

If he mixes up his corrupt votes with honest ones, so that it is impossible to distinguish the one from the other, the general maxim, *in odium spoliatoris omnia præsumuntur* would apply. If we prove the fraud and crime, and bring it home, as we will, to this Relator, the law would presume the extent of the injury.

In the case of *Mortimer* vs. *Cradock*, 7 Harrison Dig. 1705, from the unexplained possession of certain jewels forming part of a necklace, the conversion of the entire necklace was inferred and damages awarded accord-

ingly. In the case of *Wardour* vs. *Berisford*, 2 Vern. 452, a demand of £2300 was decreed satisfied because the creditor had altered and displaced a bundle of sealed papers intrusted to his care, which were presumed to contain some acquittance or discharge of the demand.

In the case of *Dalston* vs. *Coatsworthy*, 1 Peere Wms. 732, on proof of destruction of a will, the Court, contrary even to the evidence of the witnesses, inferred its language to be such as would give the Plaintiff the estate he claimed.

See also *Annesly* vs. *Alham*, 17 State T. 1430–1–8–42, Sugden, Real Property 181. *Lancaster* vs. *Atkinson*, 2 Russell, 60. *Jones* vs. *Murphy*, 8 Watts & S, 300, 301. *Harwood* vs. *Goodnight*, Cowper, 87.

We cite these cases to show to what extent Courts of law presume the extent of the injury done when once the fraud of the party is proved.

In strict analogy to these cases, if once we show that this Company has employed its agents to go through the polls bribing large numbers of voters, scattering money everywhere, and, through these large sums of money, influencing voters, then the law will raise the presumption that Relator did what we prove he undertook to do, carry this election through fraud. To hold otherwise, would be to hold that a party may corruptly influence an election, and then, through the almost impossibility of tracing the precise persons influenced, reap the full benefit of the fraud.

We say, No. You have been guilty of this fraud. It has had, as we shall show, a great effect. When you scattered that money and the crowd picked it up, it is

not in the nature of things that we can follow each voter to the polls and see what vote he deposited. We cannot descend into his mind and see to what extent that money changed his preconceived resolution. We will not undertake to ascertain how many persons yielded to the enthusiasm which you corruptly created. It is sufficient for us that you undertook to carry this assent by fraud —that you used corrupt means to secure it, that as far as we can trace you, you were successful. We will presume the rest rather than that you should grow rich from a fraud which we prove you to have committed for this very purpose, You say it is doubtful whether this fraud operated to the extent of changing a majority of the votes cast. We say that the law gives the benefit of this doubt to the innocent party and not to the criminal. See Grant on Corporations, side page 233.

In the case of *The Queen* vs. *The Rector, Church Wardens and Parishioners of St. Mary, Lambeth*, 8 Adolph. & Ell. 361, Lord Denman says, "If it had appeared that any one person had been excluded, we would have gone a good way in supposing that the resolution had effected the result of the election."

The English statutes declare any person bribing, incapable of holding office; so that if a member of parliament bought a single vote, his election would be void. See Grant on Corp. et Sup.

Happily, cases like this are rare. We have not been able to find any case directly in point, and we must argue the question on principle; and we think we have shown the principle to be that against a party guilty of

fraud used to carry out a certain purpose, the law will presume the extent of the injury done by the fraud.

Again: We contend that this corporate assent to this subscription was a unit and indivisible, and that if it is affected by fraud, the whole is corrupted. Suppose it could be proved that one member of a grand jury was bribed to find an indictment, would not that vitiate the indictment even though there were a sufficient number beside who voted for it. Would, or could the law estimate the effect produced on the others by this bought vote; or, if three trustees signed a deed to A, and it could be proved that A had bought the consent of one of them, would not the deed be void as against A, though a majority of those trustees could have acted. How could it be told whether the trustee bought had not influenced the assent of the other two.

In the case of *Oakland* vs. *Carpentier*, it was held that a single trustee of a town, holding his place for the purpose of carrying out a fraudulent intent, vitiated any contract in his favor. Yet there was a quorum without him. Suppose it could be proved that a single Supervisor had been bought to vote for a contract, would not that vitiate the contract against the guilty party.

In this case the question was, will this corporation give its assent to a certain subscription. That assent was given. We examine it and find it tainted with fraud and crime through and through. And now the party guilty of this fraud and crime holds up to the Court this rotten assent and gravely asks the Court to cut out those portions clearly tainted, and where there

is a possible doubt or uncertainty as to whether a portion is tainted or not, to solve the doubt in his favor. Evidently it is impossible to tell to what extent the rotten part has corrupted and infected the rest.

JOHN B. FELTON,
HALL McALLISTER, and
HORACE HAWES,
Of Counsel for Defendants.

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,

JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

HENRY M. HALE, AUDITOR,
City and County of San Francisco.

THE PROPOSED AMENDED ANSWER

Of the above-named defendants, to the petition and affidavit, upon which the application of above named plaintiffs for a peremptory mandate against said defendants, is based, shows to this Court:

That said defendants deny that the Board of Supervisors of the City and County of San Francisco, on the 25th day of May, A. D. 1863, or at any other time became, or were lawfully or duly or otherwise bound or obliged to subscribe $600,000, or any other sum, to the capital stock of The Central Pacific Railroad Company of California, or to make, execute or deliver to said company bonds to said amount, or any other amount, as alleged in said petition and affidavit.

These defendants further deny, that on the 7th day of June, 1864, or at any other time, they have been compelled by a final judgment of the Supreme Court of this State, to execute or deliver the bonds specified in the act entitled, "An Act to authorize the Board of Super- "visors of the City and County of San Francisco to "take and subscribe one million of dollars to the capital "stock of the Western Pacific Railroad Company and "the Central Pacific Railroad Company of California, "and to provide for the payment of the same and other "matters relating thereto," approved April 22, 1863.

These defendants further deny, that they are, or ever have been bound by law to execute or deliver to the said Central Pacific Railroad Company of California the said four hundred bonds of the said City and County, with interest coupons, or otherwise, as averred in said petition and affidavit; but they insist, on the contrary, that said Ordinance No. 582, is wholly illegal and void, and that neither said Board of Supervisors nor the Legislature of the State of California, have any right or power to make to said Central Pacific Railroad Company a donation of four hundred thousand dollars, or any other sum of money belonging to the City and County of San Francisco.

And these defendants aver, according to their informatisn and belief, that the special election, held on the third Tuesday of May, 1863, under the provisions of that certain statute of the State of California, entitled, "An Act to authorize the Board of Supervisors of the "City and County of San Francisco to take and sub- "scribe one million dollars to the capital stock of the

" Western Pacific Railroad Company, and the Central " Pacific Railroad Company of California, and to provide " for the payment of the same, and other matters rela- " ting thereto," approved April 22, 1863, was not fairly, or properly, or legally conducted, but was effected, influenced and controlled, by corruption and bribery, extensively and successfully practiced and perpetrated by the said " Central Pacific Railroad Company of California," acting by and through some of its stockholders, and by and through its agents and employees; that true it is, that a majority of the votes cast by the qualified electors of said City and County, at said special election, were in favor of the proposition of subscription submitted thereat, under the provisions of last mentioned statute, but these defendants aver, according to their information and belief, that this result, and this consent of the majority of said electors, was procured by large numbers of them, who otherwise would have voted against said proposition of subscription, being corruptly induced to vote, and actually voting at said special election, in favor of said proposition of subscription, by money, furnished for the purpose of bribery at said election, by said "Central Pacific Railroad Company of Californi," and corruptly given to said electors for their votes at said election in favor of said proposition of subscription, by the agents and employees of, and at the instance of, last named Company.

And these defendants further allege, according to their information and belief, the following particular instances of bribery and corruption of electors and voters at said special election by said "Central Pacific Railroad Com-

pany," but these defendants aver, according to their information and belief, that such particular examples, hereinafter given, constitute a very small portion of the extensive and wholesale bribery and corruption of electors and voters successfully practiced at said special election by last named Company:

First. And defendants allege, according to their information and belief, that one A. Phillip Stanford, oil dealer, of the City and County of San Francisco, did, at said special election, on the 19th day of May, 1863, at the polls at the Ninth Ward, in said City and County, then and there acting as the agent of, and on behalf of, said last named company, unlawfully, wickedly and corruptly, give to one of the qualified electors of said City and County, a large sum of money, to wit, the sum of forty dollars, in United States gold coin, as a gift and bribe to said elector to give his vote, and use his influence, at said special election, in favor of said proposition of subscription, and that said last mentioned elector then and there received and took from said Stanford said bribe of forty dollars, and in consequence of such bribe then and there voted at said special election in favor of said proposition of subscription, and also then and there used his (said elector's) influence in and about said Ninth Ward polls to induce other electors to vote in favor of the said proposition of subscription.

Second. And defendants further allege, according to their information and belief, that said A. Phillip Stanford did, at said special election, on the 19th day of May, 1863, at the polls of the Ninth Ward, in said City and County,

then and there acting as the agent of, and on behalf of, said "Central Pacific Railroad Company of California," unlawfully, wickedly and corruptly, give five dollars apiece, in United States gold coin, to forty of the qualified electors of said City and County, as a gift and bribe to each of said forty electors to give his vote, in favor of said proposition of subscription, and that each of said last mentioned forty electors then and there received and took from said Stanford said bribe of five dollars, and in consequence of such bribe then and there voted at said special election in favor of said proposition of subscription.

Third. And defendants further allege, according to their information and belief, that said A. Phillip Stanford, in addition to his other acts hereinbefore recited, did, at said special election, on the 19th day of May, 1863, at the polls of the Ninth Ward of the said City and County, then and there acting as the agent of, and on behalf of, said "Central Pacific Railroad Company of California," unlawfully, wickedly and corruptly, distribute among the qualified electors of said City and County, at said Ninth Ward polls, a large sum of money, in United States gold coin (the amount of which these defendants cannot state,) as gifts and bribes to many of said electors to give their votes, and use their influence, at said special election, in favor of said proposition of subscription, that said large sum of money was then and there distributed by said Stanford among said electors at said Ninth Ward polls, by his throwing many handfuls of said money (being of the denomination of twenty dol-

lars, ten dollars, five dollars, and of other denominations,) among the said electors, and thereupon they scrambled among themselves for the same, and these defendants aver, according to their information and belief, that the moneys and bribes so corruptly distributed by said Stanford, had then and there great influence and effect upon many of the electors at said Ninth Ward polls, and corruptly influenced a large number of them to cast their votes at said special election in favor of said proposition of subscription, and mainly caused the majority of the votes cast at said special election at said Ninth Ward polls to be given in favor of said proposition of subscription.

Fourth. And these defendants further allege, according to their information and belief, that said A. Phillip Stanford did, at said special election, on the 19th day of May, 1863, at the polls of the Fourth Ward, in said City and County, then and there acting as the agent of, and on behalf of, said "Central Pacific Railroad Company," unlawfully, wickedly and corruptly, distribute among the qualified electors of said City and County at said Fourth Ward Polls, a large sum of money, in U. S. Gold Coin (the amount whereof these defendants cannot state) as gifts and bribes to as many of said electors as would then and there receive the same to give their votes, at said special election, in favor of said proposition of subscription; and these defendants aver, according to their information and belief, that the moneys and bribes so corruptly distributed at said Fourth Ward polls by said Stanford, had then and there great influence and effect upon many of the electors at said Fourth

Ward polls, and corruptly influenced a large number of them to cast their votes at said special election in favor of said proposition of subscription, and mainly caused the majority of the votes cast at said special election at said Fourth Ward polls to be given in favor of said proposition of subscription.

Fifth. And these defendants further allege, according to their information and belief, that said A. Phillip Stanford did, at said special election, on the 19th day of May, 1863, at the polls of the First Ward, in said City and County, then and there, acting as the agent of, and on behalf of, said "Central Pacific Railroad Company of California," unlawfully, wickedly, and corruptly distribute among the qualified electors of said City and County at said First Ward polls, a large sum of money, in United States gold coin (the amount whereof these defendants cannot state) as gifts and bribes to many of said electors to give their votes, at said special election in favor of said proposition of subscription; which said gifts and bribes were then and there accepted and received by many of said electors, and corruptly influenced said electors to, then and there, cast their votes at said special election in favor of said proposition of subscription; and these defendants aver, according to their information and belief, that the bribes so corruptly distributed by said Stanford, had, then and there, great influence and effect and mainly caused the majority of the votes cast at said special election at said First Ward polls to be given in favor of said proposition of subscription.

Sixth. And these defendants further allege, according to their information and belief, that said A. Phillip Stanford did, at said special election, on the 19th day of May, 1863, at the polls of the Tenth Ward, in said City and County, then and there acting as the agent of, and on behalf of, said "Central Pacific Railroad Company of California," unlawfully, wickedly and corruptly distribute among the qualified electors of the said City and County, at said Tenth Ward polls, a large sum of money in the United States gold coin (the amount whereof these defendants cannot state) as gifts and bribes to many of said electors to give their votes, at said special election, in favor of said proposition of subscription; that said large sum of money was then and there distributed by said Stanford among said electors at said Tenth Ward polls, by his throwing many handfuls of said money among said electors, and thereupon they scrambled among themselves for the same; and these defendants aver, according to their information and belief, that the moneys and bribes so corruptly distributed by said Stanford, had then and there great influence and effect upon the vote at said special election, at said Tenth Ward polls, and corruptly influenced a large number of said electors, who otherwise would have voted against said proposition of subscription, to cast their votes at said special election in favor of said proposition, and mainly caused the majority of the votes, cast at said special election, at said Tenth Ward polls to be given in favor of said proposition of subscription.

Seventh. And these defendants further allege, according to their information and belief, that said A. Phillip

Stanford did, at said special election, on the 19th day of May, 1863, at the polls of the Sixth Ward, in said City and County, then and there acting as the agent of, and on behalf of said "Central Pacific Railroad Company of California," unlawfully, wickedly and corruptly distribute among the qualified electors of said City and County, at said Sixth Ward polls, a large sum of money, in United States gold coin (the amount whereof these defendants cannot state) as gifts and bribes to many of said electors to give their votes, at said special election, in favor of said proposition of subscription; which said gifts and bribes were then and there accepted and received by many of said electors, and corruptly influenced many of said electors, who otherwise would have voted against said proposition of subscription, to, then and there, cast their votes at said special election in favor of said propsition of subscription; and these defendants aver, according to their information and belief, that the bribes so corruptly distributed by said Stanford had, then and there, great influence and effect, and mainly caused the majority of the votes, at said special election, cast at said Sixth Ward polls, to be given in favor of said proposition of subscription.

Eighth. And these defendants further allege, according to their information and belief, that said A. Phillip Standford did, at said special election, on the 19th day of May, 1863, at the polls of the Fifth Ward, in said City and County, then and there acting as the agent of, and on behalf of said "Central Pacific Railroad Company of California," unlawfully, wickedly and corruptly distribute among the qualified electors of said City and

County, at said Fifth Ward polls, a large sum of money, in United States gold coin (the amount whereof these defendants cannot state) as gifts and bribes to many of said electors to give their votes, at said special election, in favor of said proposition of subscription; which said gifts and bribes were then and there accepted and received by many of said electors, and corruptly influenced many of said electors, who otherwise would have voted against said proposition of subscription, to, then and there, cast their votes at said special election in favor of said proposition of subscription; and these defendants aver, according to their information and belief, that the bribes so corruptly distributed by said Stanford had, then and there, great influence and effect, and mainly caused the majority of the votes, at said special election, cast at said Fifth Ward polls, to be given in favor of said proposition of subscription.

Ninth. And these defendants further allege, according to their information and belief, that said A. Phillip Stanford did, at said special election, on the 19th day of May, 1863, at the polls of the Second Ward, in said City and County, then and there acting as the agent of, and on behalf of, said "Central Pacific Railroad Company of California," unlawfully, wickedly and corruptly distribute among the qualified electors of said City and County, at said Second Ward polls, a large sum of money, in United States gold coin (the amount whereof these defendants cannot state) as gifts and bribes to many of said electors to give their votes, at said special election, in favor of said proposition of subscription; which said gifts and bribes were then and there accepted and received by many of said electors, and corruptly

influenced many of said electors, who otherwise would have voted against said proposition of subscription, to, then and there, cast their votes at said special election in favor of said proposition of subscription; and these defendants aver, according to their information and belief, that the bribes so corruptly distributed by said Stanford, had, then and there, great influence and effect, and mainly caused the majority of the votes, at said special election, cast in said Second Ward polls to be given in favor of said proposition of subscription.

And these defendants further aver, according to their information and belief, that said A. Phillip Stanford was, at the time of said special election, and ever since has been, and still is, the owner and holder of a very large amount of the stock of said "Central Pacific Railroad Company."

That at the time of said special election one Leland Stanford, the brother of said A. Phillip Stanford, was, and ever since has been, and still is, the President of said "Central Pacific Railroad Company of California."

And these defendants further aver, according to their information and belief, that the moneys so expended in bribery and corruption, at said special election, by said A. Phillip Stanford, as aforesaid, were for the most part moneys of said "Central Pacific Railroad Company of California," furnished by said Company to said A. Phillip Stanford, for the purpose of being expended at said special election, in the illegal, criminal, and corrupt manner in which they actually were expended by said A. Phillip Stanford, as aforesaid.

And these defendants further aver, according to their

information and belief, that, but for the aforesaid extensive and successful corruption and bribery, practiced and perpetrated by the said "Central Pacific Railroad Company of California," at said special election, the result thereof would have been different and largely adverse to said proposition of subscription.

And these defendants further aver, according to their information and belief, that on the fourth day of January, 1864, the following proceedings were had in, and the following resolution was passed by "The Board of Supervisors of the City and County of San Francisco," namely:

"Resolution No. 3121.—Resolved, That the President "of this Board is hereby requested to appoint three "members of this Board to make a thorough examina- "tion of the progress of the 'Western Pacific Railroad "Company,' and the 'Central Pacific Railroad Company "of California,' the amount expended up to this date; "also, to report in full the condition of every depart- "ment of said roads to this Board, and that an appro- "priation not to exceed three hundred dollars, be and is "hereby authorized from the 'Urgent Necessity Fund,' "to carry out the purposes of this resolution."

"In Board of Supervisors, San Francisco, January 4th, 1864, adopted by the following vote:

Ayes—Supervisors Titcomb, Fay, De la Montanya, Kennedy, Torrey, Bell, Cummings, Cody.

Noes — Supervisors King, Hinckley, Merrill, and McCoppin."

That under, and in accordance with, said Resolution, the President of said "Board of Supervisors of the City and County of San Francisco," appointed a Committee of three members thereof, to carry out the purposes of said resolution.

That after their said appointment, said Committee proceeded, in January, 1864, to the City of Sacramento, California. where the principal office and place of business of said "The Central Pacific Railroad Company of California" is, and always has been, situated, and made application at the said office of said Railroad Company and to the officers thereof, for permission to examine the books and papers of said Railroad Company, which said permission was then and there refused to said Committee by the officers of said Company, and has ever since been, and still is, refused to said "Board of Supervisors of the City and County of San Francisco," and to these defendants by said Company.

And these defendants further aver, according to their information and belief, that at the time said last mentioned Committee made application as aforesaid to said "Central Pacific Railroad Company of California," at their said principal office, for leave to examine their books, to wit: In the month of January, 1864, the said Leland Stanford, then and there President of said Company, stated to said last mentioned Committee, in substance, "that said Company could not allow their books " to be examined, because the result of such examination, " if made public, would injure said Company in public " estimation."

And these Defendants further aver, according to their information and belief, that recently, during the present month of September, 1864, the Board of Supervisors of Placer County, said Placer County, then and now, being a stockholder of the stock of said Central Pacific Railroad Company of California, to the extent of two hun-

dred and fifty thousand dollars, appointed a special committee to examine the books, and investigate the affairs of said last named company. That said last mentioned committee during September, 1864, applied to said company at their aforesaid principal office for leave to examine their books, and to make extracts therefrom, which permission said company refused to grant.

That, upon such refusal, various written questions were propounded by said last mentioned committee, to said company, and that the following are some of said questions and the answers thereto, which said answers were given by said company, acting by its officers and trustees, during this present month of September, 1854, namely:

Question 4th—"What is the amount of the subscrip-
"tion by the Directors: how much subscribed by each,
"and whether or not they have paid cash for the same?"

Answer—"C. P. Huntington, six hundred and fifty
"shares; Mark Hopkins, six hundred and fifty shares;
"Leland Stanford, six hundred and seventy-five shares;
"Phillip Stanford, six hundred and sixty shares; E. B.
"Crocker, ten shares; D. M. Strong, fifty shares; C.
"Marsh, fifty shares; L. A. Booth, ten shares; E. Miller,
"ten shares. Cash has been received for the same, as
"far as paid. Company refuse to allow a list of how
"much has been paid by individual Directors, or how
"much delinquent."

Question 32d.—"How much cash, stock, or bonds, or
"securities of any kind, have been paid for bonuses or
"personal services, or for legislation in California or in
"Washington, or for election expenses in Placer, Sacra-
"mento, and San Francisco counties, and to whom were
"they paid?"

Answer—"Think not over seventy-five thousand dol-

"lars; not allowed any extracts from books, and Com-
"pany refuse any information than their statement."

Question 37th.—"How much stock has been sub-
"scribed by Stanford, Huntington and Hopkins, E. B.
"Crocker, and the rest of the Directors, and whether or
"not they have paid up the amount of same in cash, in
"full."

Answer—"Company refuse allowing abstracts to be
"taken from the books showing the delinquencies."

And these defendants further allege, that true it is, that Order No. 582, which is set forth at large in the petition of plaintiffs in this proceeding, was passed on the 20th June, 1864, by the Board of Supervisors of the City and County of San Francisco, and was approved by the Mayor of said City and County on the 21st day of June, 1864, but these defendants aver, according to their information and belief, that at the time of the passage and approval of said Order No. 582, neither said Board of Supervisors of the City and County of San Francisco, nor the individual members thereof, nor any of them, nor the Mayor of said City and County, had knowledge or information of the aforesaid bribery and corruption practiced at said special election by said "Central Pacific Railroad Company of California," or of the fact that said special election had been influenced or controlled by bribery and corruption perpetrated by said last named company, or by its stockholders, agents or servants, or by any of them. That had these facts of bribery and corruption, herein alleged, or any of them, been known by or communicated to, said last mentioned Board, before the passage, or to said Mayor, before the approval, of said Order No. 582, the same, as these defendants are

informed and believe, would neither have been passed by said Board, nor approved by said Mayor.

And these defendants aver, that the passage of said Order, No. 582, by said Board of Supervisors of the City and County of San Francisco, and the approval of same by the Mayor of said city and county, were procured by the false and fraudulent representations of the officers of said Central Pacific Railroad Company of California, for that the officers of said last named company, immediately previous to the passage and approval of said Order, No. 582, with the intent to deceive said last mentioned Board and said Mayor, and to fraudulently induce the passage and approval of said Order, No. 582, falsely and fraudulently and at various times represented to said last mentioned Board and to said Mayor, that if the proprosed compromise, afterwards embodied in said Order, No. 582, were not made, (that is, if said Order 582 were not passed and approved,) the whole subscription of $600,000 with at least a year's back interest on the whole amount of said $600,000 would be immediately due and owing to said Central Pacific Railroad Company of California from the City and County of San Francisco. That a majority of said last mentioned Board of Supervisors, relying on and influenced by, said last mentioned representations, passed said Order, No. 582, and said Mayor, relying upon and influenced by same representations, approved the same, as aforesaid.

And these defendants aver, according to their information and belief, that in truth, and as the officers of said "Central Pacific Railroad Company of California," at

the time of last mentioned representations, well knew said representations were false, for that said last named Company had not, at the time of last mentioned representations, and have not up to this date, called in, or collected from individual subscribers to their capital stock (who then and there owned, and do still own, at least 2,750 shares of their capital stock), the whole amount or any large portion, of their respective subscriptions to said capital stock.

And these defendants aver, that said City and County of San Francisco, after the aforesaid consent of her electors to said proposition of subscription, was, at all times, entitled to the same treatment from said "Central Pacific Railroad Company of California" as any other stockholder of said Company, and was only compelable under aforesaid statute of April 22nd, 1863, to issue her six hundred thousand dollars of Bonds, in liquidation of her subscription to last named Company, *pari passu*, with the payments towards the capital stock thereof exacted by said Company from her stockholders or subscribers, other than said City and County of San Francisco, and this the officers of last named Company well knew, at the times of their aforesaid representations.

Wherefore, these defendants pray to be hence dismissed with costs.

HALL McALLISTER,
HORACE HAWES, and
JOHN B. FELTON,
Of Counsel for Defendants.

Dated, San Francisco, September 29th, 1864.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

HENRY M. HALE and JOSEPH S. PAXSON, of the aforesaid City and County and State, each being duly sworn, deposes and says—each for himself: That the said Henry M. Hale is the Auditor of the City and County of San Francisco, and the said Joseph S. Paxson is the Treasurer of said City and County, that they are two of the three defendants named herein, and they and each of them have read the foregoing amended answer and know the contents thereof. That the same is true of their own knowledge, except as to the matters which are therein stated, on information and belief, and as to those matters that they believe it to be true.

HENRY M. HALE,

JOS. S. PAXSON.

Subscribed and sworn to before me, this 29th day of September, 1864. G. C. LETCHER, Dep. Co. Clerk.

[Internal Revenue Stamp, 5 cents, canceled.]

APPENDIX.

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

FRANK MCCOPPIN, being duly sworn, says: That he is a resident of the City and County of San Francisco; that he is a member of the Board of Supervisors of said City and County; that he has represented the Eleventh District, in said Board, since the year eighteen hundred and sixty; that he was appointed to serve as one of a Special Committee of three members, of said Board of Supervisors, whose duty it was to go to Sacramento, for the purpose of examining the books of "The Central Pacific Railroad Company, of California;" that the said

Special Committee proceeded to Sacramento in the month of January, eighteen hundred and sixty-four, eight months ago, and to the office of said Railroad Company, and that Leland Stanford, the President, and other officers of said Railroad Company, were there, and when the Committee stated the object of their visit; the said Stanford, and others, officers of the Company, refused to allow the books of the Company to be examined by the Special Committee, of which this affiant was a member, or Mr. Jerome Lincoln, who was engaged by said Committee, for that purpose; and the said Leland Stanford stated to the Committee, that the Railroad Company would not or could not allow their books to be examined, because the result of the proposed examination would, if made public, injure the Company in public estimation. That subsequently—on the following day—the said Special Committee, accompanied by the President and other officers of said Railroad Company, proceeded along the line of said Railroad to Auburn, and on the way up, Charles Crocker, formerly one of the Directors of said Railroad Company, and then a contractor, doing work for, and a stockholder in, said Railroad Company, and largely interested in, and then acting as one of the controlling agents of said Company, told this affiant that the reason the Company refused to allow an examination of their books, was this: "The Railroad "Company," said Crocker, "have been carrying elec- "tions, and you know it costs money to carry elections, "and the books of the Company show it"—or words to that effect; and affiant further says, that he has since opposed the issue of bonds of the City and County of San

Francisco, to said Railroad Company, because he believed, and still believes the assent of the electors of San Francisco was obtained by fraudulent and corrupt means, and that to issue the bonds under the circumstances, would be a great and irreparable injury to the people of this City and County, whom this affiant represents in said Board of Supervisors; and affiant says he has been governed throughout the controversy arising out of this question, by considerations of public policy, and by none other, and that he does not now own, and never has owned any interest of any kind whatever, which would be in any way affected by the issue of said bonds, other than as a resident and property owner of the City of San Francisco. And this affiant is informed, and believes, that on the third Tuesday in May, 1863, at the time the election was held, at which was submitted the proposition to take and subscribe six hundred thousand dollars to the capital stock of the Central Pacific Railroad Company, of California, Phillip Stanford, the brother of Leland Stanford, President of said Railroad Company, was then a stockholder in said Company, and largely interested in its affairs, and one of the controlling agents thereof, and has been since that time, and still is.

FRANK MCCOPPIN.

Subscribed and sworn to before me, this 27th day of September, 1864.

I. T. MILLIKEN,
Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco;
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

GERRIT W. BELL, being duly sworn, says: That he is one of the Supervisors of the City and County of San Francisco; that he was one of the Committee who conferred with the President of the Central Pacific Railroad Company of California, on the subject of compromising the claims for bonds, under the statute of 1863, approved April 22d, and in the exercise of the powers conferred on the Board of Supervisors by the statute, approved April 4th, 1864; that the President of the Company, Leland Stanford, represented to the Committee in session, that if this compromise were not made, the whole sum of six hundred thousand dollars would be immediately due and owing from the City and County of San

Francisco, with at least a year's back interest on the whole amount; that upon this representation, among others, this affiant was induced to consent to the said compromise, to unite with the rest of the Committee in recommending it, and to vote for it in the Board.

G. W. Bell.

Subscribed and sworn to before me, this 28th day of September, 1864. I. T. Milliken,

Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEHP S. PAXSON, TREASURER,
City and County of San Francisco.

DAVID L. BECK, being duly sworn, says: That he was present at the special election held in the City and County of San Francisco on the third Tuesday of May, A. D. 1863, when the proposition to subscribe to the capital stock of the Central Pacific Railroad was submitted to the people; that some time in the middle of the day, Phillip Stanford drove up to the polls of the Ninth Ward and threw money by the handful into the street near the polls, among the voters standing round; that a crowd gathered round him and scrambled for the money; that affiant could not hear what Stanford said, but it was generally understood that the said Stanford was

using the money to induce voters to vote for the subscription; that affiant was indignant and said that this must be a beautiful government where men are bought to vote like dogs. DAVID L. BECK.

Subscribed and sworn to, before me, this 26th day of September, 1864. P. B. CORNWALL,
Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,.

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,

JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

HENRY M. HALE, AUDITOR,
City and County of San Francisco.

HENRY JOHNSON, being duly sworn, says: That he is a resident and citizen of the City and County of San Francisco; that he was residing in San Francisco at the time of the special election held in said City on the third Tuesday of May, A. D. 1863; that he knows Phillip Stanford, and saw the said Stanford at the polls of the First, Third, Ninth and Tenth Districts on said day while the voting was going on; that the said Stanford came to the said polls in a wagon; that the said Stanford brought to the said polls a large bag of money; that the said Stanford gave various large sums of money to different persons, voters in the said City and County, for the purpose of inducing them to vote in favor of the subscription of six hundred thousand dollars to the cap-

ital stock of the Central Pacific Railroad Company; and of using the said money to procure other persons to vote in favor of said subscription; that at the polls of the Ninth Ward, in said City and County, the said Stanford put his hand frequently in the bag of money brought by him to the polls, and took money, some twenty dollar pieces and five dollar pieces, to a considerable amount, therefrom, and scattered the said money among the voters at the said polls, at the same time calling on them to vote in favor of the said subscription; that this affiant further says that he saw the said Stanford give sums of money in gold coin to various voters at the polls above named; that he saw the said Stanford give money to more than sixty voters of the said City and County, for the purpose of inducing them to vote in favor of said subscription while said election was going on, and before the said polls were closed, on the day aforesaid, when the proposition that the City and County of San Francisco should subscribe as aforesaid to the capital stock of said Railroad, was submitted to the people of San Francisco; and that to this affiant's knowledge, a large number of votes were procured in favor of said subscription, by the said Stanford, by money used for that purpose.

H. JOHNSON.

Subscribed and sworn to, before me, this 24th day of September, 1864.

I. T. MILLIKEN,
Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA,
ON THE RELATION OF THE CENTRAL
PACIFIC RAILROAD,
vs.
HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

THOMAS BIRD, being duly sworn, says: That he is a citizen and resident of the City and County of San Francisco, and resided there at the time of the special election held in said City and County, on the third Tnesday of May, A. D. 1863, at which election the proposition that the City and County of San Francisco should subscribe six hundred thousand dollars to the capital stock of the Central Pacific Railroad of California was submitted to the people of said City and County; that this affiant saw Phillip Stanford giving money to voters to

induce them to vote in favor of said subscription; that this affiant saw at least fifty persons, after receiving money from said Stanford in the Ninth Ward of said City and County, vote in favor of said subscription, and among the persons so voting in favor of said subscription were many who previously had been speaking against such subscription; that affiant saw the said Stanford distributing considerable sums of money at the Tenth Ward, also, to the voters there, at the same time calling on the voters to go to work and vote for the Railroad; that at the polls of the Ninth Ward this affiant saw said Stanford throwing money among the voters round the polls; that the money which he thus scattered was principally in five dollar pieces; that he only saw one twenty and one ten dollar piece, and the rest, so far as he saw, was in five dollar pieces; that he saw voters at said polls picking up the money so thrown, and scrambling for it, and after picking up the money go and vote for the Railroad and call upon others to vote for the Railroad, at the same time shouting for the Railroad and for Stanford; that this affiant has resided for five years close to the place where the elections have been held in the Ninth Ward of said City and County, and that he has never seen money openly and publicly used at the polls except by the said Stanford; that in one case a band of more than twenty men in the afternoon of said election day came to vote together at the polls; that one of them said to Stanford, "Give us five dollars apiece and we will vote for the Railroad;" that the said Stanford gave them the money, and thereupon they went to the polls, and that a man standing by Stanford gave

each of them a ticket in favor of the Railroad; that they thereupon went to the polls with these tickets in their hands.

his
THOMAS X BIRD.
mark.

Subscribed and sworn to before me, on this 26th day of September, 1864. P. B. CORNWALL, Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

JOHN LYNCH, being duly sworn, says: That he has resided in the City and County of San Francisco for the last twelve years; that he was present at the polls of the Ninth Ward in the afternoon of the day when the proposition to subscribe to the capital stock of the Central Pacific Railroad of California was submitted to the people; that a number of men were going to the polls to vote; that a man came to this affiant and showed him some money and said to him, "Why don't you vote for the Railroad; see what I have got!" that he saw a man take money from his pocket and give it to different persons in the crowd standing round the polls; that two

or three persons showed the money they received to this affiant; that the same man threw money among the crowd; that this affiant picked up some of the money from the ground; that the man who scattered the money at the same time called out to the crowd to come along with him and vote the Railroad ticket; that this affiant saw several persons, after receiving the money, go with the man who threw the money, to the polls and vote.

his
JOHN X LYNCH.
mark.

Subscribed and sworn to this 27th day of September, 1864, before me, I. T. MILLIKEN, Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,

JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

HENRY M. HALE, AUDITOR,
City and County of San Francisco.

GEORGE F. STANTON, being duly sworn, says: That at the special election held in the City and County of San Francisco on the third Tuesday of May, A. D. 1863, he was present at the polls of the Fourth and Sixth Wards; that he saw Phillip Stanford scattering money at both of these places, calling on the crowd at the same time to vote for the subscription to the Pacific Railroad; that he saw him throwing twenty dollar pieces, two dollar and a half pieces and five dollar pieces; that affiant saw four or five persons, after receiving such money, go directly and vote in favor of the subscription; that affiant is sure from what took place at the polls, that many others voted in favor of the subscription, influenced

thereto by the money used by the said Stanford; that it was a notorious fact in the town, that the subscription was carried by money used by the said Stanford; that after said election affiant saw many persons with money in their hands, which they said was Railroad money.

GEO. F. STANTON.

Subscribed and sworn to before me, on this 26th day of September, 1864.

P. B. CORNWALL,
Notary Public.

[Internal Revenue Stamp. 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA,
ON THE RELATION OF THE CENTRAL
PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

JAMES FITZ-HARRIS, being duly sworn, says: That at the election, in the City and County of San Francisco, when the question whether the City and County of San Francisco should subscribe six hundred thousand dollars to the capital stock of the Central Pacific Railroad was submitted to the people; he was a regular policeman of said City and County, and was stationed at the polls of the Fourth Ward; that affiant saw Phillip Stanford there in the afternoon of said day, and while said election was going on, and saw him distributing money in considerable quantities to persons standing round, or at some distance from the polls; that affiant

saw parties of men, who previously to Stanford's coming there were speaking against the subscription, afterwards working for the subscription and trying to influence men, who came to vote, to vote for the subscription. Affiant says, that from what he saw at the polls, that he has no doubt that many voters voted for the subscription, influenced thereto by the money which they received from Phillip Stanford; that when Stanford gave the money parties of men who received it cried out, "Hurrah for the Railroad! Boys, come up and vote for the Railroad!"

Affiant further says, that afterwards, in the same afternoon, he went to the polls at the Sixth Ward; that he there saw Phillip Stanford distributing money to persons round the polls by the handful; affiant heard a general hurrah for the Railroad from the crowd that was standing round Stanford and receiving money from him. It was generally understood and known at the polls that the said Stanford had distributed a large sum of money for the purpose of obtaining votes for the Railroad; that affiant is familiar with elections in San Francisco, but that he has never seen any similar occurrence; that affiant believes that in the said Fourth Ward the majority would have been against the subscription to said capital stock but for the money used by the said Stanford in procuring votes—as it was, the majority voted in favor of the subscription.

JAMES FITZ-HARRIS.

Subscribed and sworn to this 24th day of September, 1864, before me, I. T. MILLIKEN, Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

MICHAEL MORRISSEY, being duly sworn, says: That he saw Phillip Stanford at the election held in San Francisco, on the third Tuesday of May, A. D. 1863; that he saw him on First street, at the polls of the Ninth Ward; that affiant was in a crowd of men, some ten or eleven in number; that Stanford came up to the crowd and gave them each five dollars, and asked them to vote for the subscription to the Railroad; that affiant saw many persons vote for the subscription in favor of the Railroad, after receiving money from the said Stan-

ford; that afterwards affiant followed the said Stanford to the polls of the Tenth Ward, and there saw the said Stanford throwing money among the voters at the polls, at the same time calling on the voters to vote for the subscription; that this affiant picked up thirty-five dollars thrown among the crowd by the said Stanford; that at the Tenth Ward this affiant saw several voters, after receiving money from the said Stanford, go to the polls and vote for the subscription; that this affiant knows that a great many votes were cast in favor of the said subscription in consequence of the money used by the said Stanford; that at the saloon of Thomas Bird affiant saw a crowd of thirty or forty men spending money and treating each other and drinking, and they said that they were spending Railroad money; this was on the day of the election, and while the election was still going on. Affiant has been often to elections in said City and County, and never saw money used freely and notoriously as at this election.

his
MICHAEL X MORRISSEY.
mark.

Subscribed and sworn to before me, on this 26th day of September, 1864. P. B. CORNWALL, Notary Public.

[Internal Revenue Stamp, 5 cents, cancelled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA,
ON THE RELATION OF THE CENTRAL
PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEHP S. PAXSON, TREASURER,
City and County of San Francisco.

B. T. HANFORD, being duly sworn, says: That at the special election held on the third Tuesday of May, A. D. 1863, in the City and County of San Francisco, at which the proposition that the City and County of San Francisco should subscribe six hundred thousand dollars to the capital stock of the Central Pacific Railroad, of California, he was present at the polls of the Fourth Ward and remained there nearly all day; that in the forenoon of that day, while the election was going on, Phillip Stanford came to said polls in a buggy; that a number of persons were shouting at the time, "Vote 'No' for the Railroad Proposition;" that thereupon Stanford took a considerable sum of money, in twenty dollar pieces and five dollar pieces, and gave it to the people standing round,

saying to them, "Now go to work for the Railroad;" that as soon as these persons got the money they immediately shouted in favor of the Railroad. After that affiant heard no further shouting against the Railroad, and many persons who had previously been working against the Railroad went to work in favor of it; that previously to the said Stanford's coming to the polls the general impression around the polls was that the vote would be against the Railroad; that affiant saw several persons, after receiving money from said Stanford, go towards the polls with tickets in favor of the Railroad in their hands; that this affiant is satisfied that a large number of voters voted in favor of the subscription in consequence of the money paid to them by said Stanford; that affiant believes from what he saw at said polls, that there would have been a majority against the Railroad, but for the money used by said Stanford; that it was a notorious thing at the polls that Stanford was procuring votes in favor of said subscription, by the use of money.

That affiant went to the Fifth Ward polls on the same day, and that there it was a subject of general conversation, that Stanford had been using money there also, in favor of the said subscription.

That this affiant has frequently been present at elections in said City and County, but that he never saw money openly and publicly used in carrying an election before. BENJ. T. HANFORD.

Subscribed and sworn to, this 26th day of September, 1864, before me, I. T. MILLIKEN,
Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA,
ON THE RELATION OF THE CENTRAL
PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,

JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

HENRY M. HALE, AUDITOR,
City and County of San Francisco.

ROBERT MCDOUGALL, being duly sworn, says: That at the special election held on the third Tuesday of May, A. D. 1863, in the City and County of San Francisco, at which the proposition that the City and County of San Francisco should subscribe six hundred thousand dollars to the Central Pacific Railroad of California, was submitted to the people, was a policeman, stationed at the polls of the Ninth Ward, in said City and County; that he saw Phillip Stanford, who was known at the polls as the Railroad man; that a large party of persons were waiting for him and calling out against the Railroad; that Stanford came there, and when he went away the same persons went to work in favor of the Railroad;

that affiant saw the said Stanford give to one person, two twenty dollar pieces; and afterwards saw him throwing out money among the crowd at the polls, who scrambled for the money; that at the same time the said Stanford called on the crowd to vote in favor of the Pacific Railroad, and do all they could for it; affiant says that a large number of voters were induced to vote for the subscription, by the money then and there used by said Stanford; that affiant verily believes, that but for such money the Ninth Ward would have gone against the subscription. ROBERT MCDOUGALL.

Subscribed and sworn to before me, this 26th day of September, 1864. P. B. CORNWALL,

Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA,
ON THE RELATION OF THE CENTRAL
PACIFIC RAILROAD,
vs.
HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEHP S. PAXSON, TREASURER,
City and County of San Francisco.

WILLIAM KEYSER, being duly sworn, says: That on the morning of the day when the question as to the subscription to the capital stock of the Central Pacific Railroad was submitted to the people of the City and County of San Francisco, and while the election was going on, he saw Phillip Stanford at the polls of the Fourth Ward in said City and County; he came there in a buggy and had a large crowd of men around him, and was handing money to them liberally; he held out money to all who offered to take; I didn't see him refuse anyone. He said to the persons standing by, "Now go to work for the Railroad; do all you can." Affiant has no doubt, from what he saw, that many persons then voted in favor of

the subscription to the stock of said road, induced thereto by the money received from the said Stanford. Three quarters of an hour, or thereabout, afterwards, affiant went to the polls of the Sixth Ward of said City and County, and saw Stanford again handing out money liberally to persons round the polls, telling them, substantially, the same thing as before. In the course of an hour afterwards, a friend asked affiant to go to the Fifth Ward. While affiant was standing at the polls of the said Fifth Ward, the said Stanford came there in a buggy; he paid out money to persons standing round the polls during fifteen or twenty minutes, and then said to some persons, whom he had paid nothing to, that he had exhausted all the money he brought with him, and that he would go back and get some more and come back in an hour. This affiant further says, that the sum of money spent by the said Stanford was considerable, but he cannot tell how much, as the crowd round the buggy of the said Stanford was so great.

WM. KEYSER.

Subscribed and sworn to, before me, this 24th day of September, 1864.

I. T. MILLIKEN,
Notary Public.

[Internal Revenue Stamp, 5 cents, cancelled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO, } ss.

E. W. DALBY, being duly sworn, makes oath, that on the day of election, when the subscription to the Central Pacific Railroad was voted for, he was at the Sixth Ward Polls in the City and County of San Francisco; that one Stanford came to said polls in a buggy, and distributed money to the crowd there; that one C. A. Crane got into the buggy with said Stanford and drove off with him; that when they returned, the said Crane gave to this deponent and one Ross, a written order, directing Stanford & Bros. to pay to the bearers, (this de-

ponent and said Ross) the sum of twenty dollars, in consideration that this deponent and said Ross would endeavor to influence voters at said polls to vote for said subscription; that on the day after said election, this affiant and said Ross presented said written order at the store of the said Stanford & Bros. on California street, in said City and County, and then and there received the sum of twenty dollars in said order mentioned, of which said sum this affiant retained ten dollars, and the said Ross ten dollars.

Affiant further says, that the said Stanford had a large sum of money in the said buggy, and distributed the same, or a part thereof, among the voters at said polls, for the purpose, as this affiant is informed and believes, of getting their votes for the subscription.

Affiant further says, that at the time when he and the said Ross presented said written order at the store of said Stanford & Bros., there were many men in and about said store with similar orders upon said Stanford & Bros. for various sums of money, and this affiant is informed and believes, that said orders were given for the same purpose as was that given to him and the said Ross, and that said orders were paid.

E. W. Dalby.

Subscribed and sworn to, before me, this 5th day of October, A. D. 1864.

Geo. T. Knox, Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO. } ss.

ROBERT HOWARD, of said City and County, being duly sworn, makes oath: That, during the election held in the City and County of San Francisco, when the proposition to subscribe to the capital stock of the Central Pacific Railroad of California, was submitted to the people, this affiant was present at the polls of the Sixth Ward, in said City and County, that one Charles A. Crane came to said polls and gave to this affiant a written order on the firm of Stanford & Brothers, on Cali-

fornia street, for the sum of five dollars, in consideration that this affiant would vote for and endeavor to influence voters in favor of said subscription.

That, on the same day, this affiant presented said written order at the store of said Stanford & Brothers, and the said sum was then and there immediately paid to him.

And affiant further says, that, on the day following said election, one D. J. Callaghan gave to this affiant a written order on said firm of Stanford & Brothers, for the sum of five dollars, in consideration of the services rendered by this affiant in influencing votes in favor of said subscription at said election; and that, on said last mentioned day, this affiant presented said order at said store of Stanford & Brothers, and the said sum of five dollars was then and there immediately paid to this affiant. ROBERT HOWARD.

Subscribed and sworn to, before me, this third day of October, A. D. 1864.

GEO. T. KNOX, Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, MAYOR,
City and County of San Francisco,
HENRY M. HALE, AUDITOR,
City and County of San Francisco,
JOSEPH S. PAXSON, TREASURER,
City and County of San Francisco.

STATE OF CALIFORNIA.
CITY AND COUNTY OF SAN FRANCISCO. } ss.

WILLIAM T. CONNOR, being duly sworn, deposes and says: That he was present at the polls of the Sixth Ward of the City and County of San Francisco, on the day when the people were voting on the question of the Central Pacific Railroad subscription; that on said day one C. A. Crane made a written order upon Stanford & Brothers, directing them to pay to four or five persons therein mentioned, certain sums of money set opposite their respective names, and that said Stanford & Brothers were directed by said order to pay this deponent the sum of ten dollars.

And affiant further says: That the said Crane ordered the said money so to be paid to the said persons and this deponent, to induce them to vote for said subscription and to influence voters to vote in favor thereof; that afterwards, on the same day this deponent received the said sum of ten dollars mentioned in said order.

W. T. CONNOR.

Subscribed and sworn to, before me, this 3rd day of October, A. D. 1864.

GEO. T. KNOX,
Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

In the Supreme Court, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, ON THE RELATION OF THE CENTRAL PACIFIC RAILROAD,

vs.

HENRY P. COON, Mayor,
City and County of San Francisco,
JOSEPH S. PAXSON, Treasurer,
City and County of San Francisco.
HENRY M. HALE, Auditor,
City and County of San Francisco.

James Farrell, being duly sworn, says: That he was present at the election held in the City and County of San Francisco, when the proposition to subscribe to the capital stock of the Central Pacific Railroad of California was submitted to the people; that he was at the polls of the First and Second wards; that affiant saw a man come to the polls in a buggy and throw money among the voters standing round, and call upon them to vote for the Pacific Railroad; that he was told that this man's name was Phillip Stanford; this was about nine or ten o'clock in the morning; that afterwards this affiant saw the same man at the polls of the Second Ward; that he was giving money to the voters at the polls, and throwing it among the persons standing round; that this affiant picked up a twenty dollar piece so thrown; that the man who threw the money at the same time called on the people at the polls to vote for the subscription; that at the first polls before this man came there the appearance of things was unfavorable to the subscription, but it changed after he distributed money.

James Farrell.

Subscribed and sworn to this 27th day of September, 1864, before me. I. T. Milliken, Notary Public.

[Internal Revenue Stamp, 5 cents, canceled.]

OFFICE OF THE BOARD OF SUPERVISORS
OF PLACER COUNTY, CALIFORNIA,
THURSDAY, August 18, 1864.

The Board of Supervisors met this 18th day of August, A. D. 1864, pursuant to adjournment, for the transaction of business.

Present—James R. Rogers, D. W. Madden, A. B. Scott, W. B. Lyon, Clerk.

Minutes of the meeting held Monday, August 15th read and approved.

On motion, the Board appointed James R. Rogers, D. W. Madden and A. B. Scott a committee to act on behalf of this Board and of the County of Placer, for the purpose of examining the Books and Records of the Central Pacific Railroad Company, so far as the interests of the County of Placer are concerned, by virtue of having become a stockholder in said Company, or in any manner affecting the interests of said Placer County, and to report to this Board at their earliest convenience. Said examination to commence on the 6th day of September, A. D. 1864.

OFFICE OF THE BOARD OF SUPERVISORS
OF PLACER COUNTY, CALIFORNIA,
AUBURN, September 29, A. D. 1864.

This is to certify that the foregoing is a true and correct copy or transcript of the minutes of the Board of Supervisors of Placer County, passed at a regular meeting of said Board at their rooms in the town of Auburn, on the 18th day of August, A. D. 1864, relating to the appointment of a committee to examine the Books, &c., of the Central Pacific Railroad Company, and which now appears on the records of the minutes of said Board, kept at my office.

In witness whereof, I, Walter B. Lyon, County Recorder and ex-officio Clerk of the Board of Supervisors, have hereunto set my hand and affixed my official seal, at my office in the town of Auburn, this 26th day of September, in the year of our Lord one thousand, eight hundred and sixty-four.

[SEAL.] WALTER B. LYON,
Recorder and ex-officio Clerk of the Board of Supervisors.
By JOHN M. CURRIER, Deputy.

[Internal Revenue Stamp, 5 cents, canceled.]

MINORITY REPORT

OF THE BOARD OF SUPERVISORS OF PLACER COUNTY, ON THE CENTRAL PACIFIC RAILROAD.

To the Board of Supervisors and to the Citizens of Placer County:

As President of the Board of Supervisors of your county, and by law entrusted with the responsible duty of guarding the interests of the county, I have felt it my duty to lay before you a statement of my official action as a member of the Board while acting as a Committee to examine the books of the Central Pacific Railroad Company of California. The duty is to me one of extreme delicacy and unpleasantness, inasmuch as my relations towards that Company, a majority of its officers and managers, have been, and still are, of the most friendly character; but my judgment dictating that my public relations should ever outweigh all feelings of a mere personal nature, I have been induced to action in this matter, as my duty has suggested. A short preliminary history of the reasons for the appointment of the Committee and the manner of its appointment, I deem necessary for a more perfect understanding of the subject:

The county of Placer is a stockholder in the Central Pacific Railroad Company to the extent of $250,000, upon which it is paying an annual interest of $20,000, the subscription having been made by the issue of county bonds, redeemable in twenty years from date. After the year 1868, a special annual railroad tax was to be levied as a sinking fund to redeem said bonds and accruing interest. The county holds its stock as all other stockholders, and the Board of Supervisors have all the rights appertaining to the other stockholders of the capital stock. Thus it becomes their special duty to see that the company in whose interest and welfare the county

is so deeply interested, manages its affairs with honesty and fidelity, and applies its revenues and resources in such a manner as not only in as speedy a manner as possible to carry out the great work in which it is embarked, the completion of which the State at large, and the county in particular, are so vitally interested, but also that the stock should as soon as possible become remunerative by the declaration of dividends, so as to lighten our county from the burden of a continuous and onerous taxation. Actuated by these principles, and also impelled by the fact that numerous reports were in circulation throughout the county detrimental to the interests of the Railroad Company, founded upon assertions that the Directors of the Company have, in many instances, acted in bad faith towards the Company, through contracts entered into by them, the improper and prodigal issue and use of stock for illegal purposes, want of good faith in their intention of pushing forward the work to the State line at as early a day as possible, favoritism shown by the Directors towards the Directory in the allotment of contracts, lavish expenditure of the funds of the Company, and other improper acts. The Board of Supervisors deemed that an investigation made by them into these matters, and a report thereupon to you, in the event of the same proving satisfactory, which at that time the Board had no reason to doubt, would have placed the matter beyond further cavil, and resulted equally to the advantage of the Company and the county. The Board, therefore, in the first place, appointed a special committee of two, and selected for that purpose the Hon. J. E. Hale and the Hon. F. B. Higgins, both gentlemen of the highest moral standing in the county, and eminently qualified, from their business qualifications, faithfully and efficiently to discharge the duty assigned to them.

After the action had been officially taken by the Board, the Railroad Company, through its Superintendent and Attorney, appeared before the Board and most urgently sought the rescinding of the resolution, averring that the examination would, for various reasons, be highly detrimental to their interests, and would affect their various fiscal negotiations then in progress; and particularly did they object to the investigation being made

by any other party but the Board themselves. This application, pressed upon the Board in the most forcible manner possible, and upon assurances that if the Board would undertake the duty, the utmost facilities should be afforded to them, the Board was induced to withdraw from its former action, and constituted themselves as a Committee for the purpose of said examination. Thus it will be seen that this position was not courted by the Board, or sought after, but forced upon them, as it were, by the express request of the Railroad Company. On the sixth day of September, the Committee met at Sacramento City, and repaired to the office of the Railroad Company, prepared to make the necessary investigation. On stating to the Secretary, Mr. Miller, the object of our visit, Mr. Hopkins, one of the members of the Company, enquired if the Board had made out any definite course by which they intended to conduct the examination; when he was informed by me, that as a majority of the Board had declined to obtain either the services of their own Clerk or some other competent expert to conduct the examination for them, I had prepared a series of questions, which I desired to receive answers to, and information upon, so that I might report the same to the citizens of the county, in the form of a report. The questions were then produced, read, and a copy taken by the Secretary. While discussing the matter with that officer, several of the members of the Board of Directors of the Company joined in the discussion, and from the character and tone of their remarks, soon gave me to understand not only that the information should not be furnished, or the questions answered in full, but that I should, if I persisted in endeavoring to make the investigation, be subjected to a series of petty personal insults, with a view of endeavoring to force me to abandon the examination. In this view I was more fully confirmed when one of my colleagues suggested that if he were situated as I were, that he would return to his home. Not feeling satisfied, however, to permit such unbecoming conduct to withdraw me from the discharge of my duty, I informed the parties that I had come to the office for the purpose of obtaining answers to my questions, and that until I had received them or their refusal, I should not, from any cause.

abandon the enquiry, and that from their actions I was more than ever satisfied of the necessity of the proposed examination. I, at the same time, stated that my friendly relations towards the railroad enterprise were well known, and that it rested with them whether the enemies of the Company should have the opportunity of injuring the road in public opinion through their refusal of affording their stockholders proper and legitimate information. On again demanding the privilege of inspecting the Company's books, I was shown the stock book, and on proceeding to make some extracts from it (which alone would have enabled me to have obtained data wherewith to make any kind of intelligible report to you), I was peremptorily forbidden to make any such. I then asked to see the record of corporation debts; this was, with reluctance, shown to me, and again was I refused the right to abstract anything from it in the way of information. I suppose that I might have had permission to have read the various entries had I been so disposed, but a moment's reflection will show that such a privilege was nothing but a mockery, as no memory would be competent to charge itself with the various entries therein contained, or by its aid alone furnish a statement in any manner reliable or intelligible.

This action on the part of the Directors appeared to me the more inexplicable when I considered that the law under which the Company is incorporated, specially requires such books to be kept as part of the Company's books, and as such, of course, the property of the Company and its stockholders. Finding, therefore, that I could not, by personal examination and inspection, arrive at any satisfactory or accurate results, I submitted to the officers of the company a series of questions. Those questions and their replies thereto are hereunto annexed. The questions are exactly in the manner and form propounded, and the replies—those of the officers—as near as they could possibly be taken down by me. A perusal of the replies will show that the whole examination proved a farce, and that the affairs of the Company and its management is as much a "sealed book" to all but the initiated as it ever has been; and that it is not the intention of the Company to permit their accounts and transactions to be inspected, lest, as they say, it

may interfere with their outside "fiscal arrangements." After the officers of the Company had shed so much light on their transactions and afforded us such ample and accurate material to collate and prepare an ample and satisfactory report for your information, a report was prepared for our signatures, and as we of course could not be expected from memory alone to prepare it, some one or perhaps more of the officers of the Company, as I firmly believe, kindly took that duty on themselves and saved us the trouble and responsibility. The report, however, I refused to sign, considering it in many respects an unfaithful record of facts, and in its general frame-work a document of an entirely different nature from the one required.

As to the general history of the Pacific Railroad in the hands of its present energetic managers, you are doubtless entirely familiar, as the public press from time to time has kept you fully advised thereof. A reiteration of this, therefore, can advance no useful purpose; but a faithful record of the internal management of the affairs of the Company would be of vast importance, as from it we who are so deeply interested in it, can see in what manner our moneys have been expended, and whether the officers have been faithful to their trusts. This information, I am constrained to say, I fear you can never obtain from the present Board of Directors of the Railroad Company, except perhaps through a compulsory legal process. Everything that I saw connected with their mode of management irresistibly forced conviction upon my mind that this enterprise, in place of being as it was intended to be, a great national enterprise, has degenerated into a scheme for the sole advancement of the personal or pecuniary interests of the Directors and their favorite associates; and that the interests of the stockholders and others will be entirely sacrificed to aggrandize the projectors of the undertaking.

Now, in the apparent plenitude of their success, they find it convenient to refuse information to their stockholders, to complicate and confuse their accounts so as to defy examination. Yet the time will arrive when such a course will recoil upon them, and the body of the Company, whose rights have been outraged, will deprive the Board of their powers of further evil. I

abstain from making any extended comment upon the answers made by the Directors to the questions they condescended to reply to, or upon their refusal to answer others. A simple perusal of them will suffice to show:

First—That the Directors will not and dare not show to the stockholders how their moneys have been expended.

Second—That the Directors will not and dare not show to the stockholders what amounts they have paid among themselves for services and perquisites.

Third—That the Directors will not and dare not show the stockholders the exact position of the affairs of the Company, or their own delinquency as stockholders.

Fourth—That the Directors do not intend to prosecute the enterprise to the State line, but only a sufficient distance to "feed" the Wagon Road enterprise, owned by a portion of the Board of Directors. And, in fine, that the whole concern is a close corporation, instituted, conducted and managed to enrich the Directors and impoverish the stockholders.

I now submit the subject to your consideration. The report of my associates will, in all probability, be laid before you. It is for you to judge between them. If you prefer to rely upon the latter document, prepared, as I verily believe, by the Directors of the Company themselves, being the report of my associates only on their signatures, then I am content—I shall have discharged my whole duty towards you—and without prejudice or fear of consequences, have endeavored to expose a scheme rarely excelled in the history of corporations.

JAMES R. ROGERS,

President of the Board of Supervisors of Placer County.

QUESTIONS PROPOUNDED TO THE OFFICERS OF THE CENTRAL PACIFIC RAILROAD COMPANY, BY JAMES R. ROGERS, PRESIDENT OF THE BOARD OF SUPERVISORS OF PLACER COUNTY:

1st—How much of the capital stock has been issued, and the amount to each?

Answer—Eight thousand seven hundred and twenty-one shares of full paid stock have been issued. The Company decline giving abstract names of stockholders, and Mr. Madden and Scott do not require it answered.

2d—How much stock has been issued for other considerations than cash? To whom and for what object?

Answer—Eleven hundred shares to Lombard & Co. for iron, and seventy-five thousand dollars to Wason & Co. for cars.

3d—How much cash has been received from individual subscriptions?

Answer—Four hundred and fourteen thousand dollars and fourteen cents.

4th—What is the amount of the subscription by the Directors; how much subscribed by each, and whether or not they have paid cash for the same?

Answer—C. P. Huntington, six hundred and fifty shares; Mark Hopkins, six hundred and fifty shares; Leland Stanford, six hundred and seventy-five shares; Phillip Stanford, six hundred and sixty shares; E. B. Crocker, ten shares; D. M. Strong, fifty shares; C. Marsh, fifty shares; L. A. Booth, ten shares; E. Miller, ten shares. Cash has been received for the same as far as paid. Company refuse to allow a list of how much has been paid by individual Directors, or how much delinquent.

5th—How much individual stock has been subscribed as a total? How much paid on account of same? How much delinquent stock is on the books, and who is delinquent?

Answer—With regard to delinquent stock, the company decline giving an account, and Mr. Scott and Madden do not see the necessity of it.

6th—How much stock has been issued by the company to contractors? Whether or not they have transferred it to others? If so, to whom?

Answer.—Two hundred and ninety-seven shares of stock have been issued to contractors.

7th—How much has been issued, full paid, to parties not living in California; amount issued to each, and place of residence?

Answer—Company decline allowing abstracts to be taken.

8th—How much cash has been received in total, and from what source? From stock, sale of first mortgage bonds, sale of county bonds, receipts of road, and from loans? And how much has been expended and for what object, viz: salaries, cost of road, etc.?

Answer—It will take too much time. We could give it to you, but it will take too long. Mr. Scott and Madden do not see the necessity of answering the question, and do not require it.

9th—What salaries are paid, and to whom, of officers of the Company?

Answer—Company decline allowing copy of pay rolls shown, but taken from table as soon as I commenced taking an abstract.

10th—What amount has been received in gold for sale of Placer County Bonds and Sacramento County Bonds each? to whom sold, and at what rates, or do the Company still hold them?

Answer—Fifty-one bonds of Placer County have been sold; twelve bonds were sold at 66⅔ cents in gold coin; thirty-nine bonds (Placer County) were sold Oct. 9th, 1863, at 95 cents in greenbacks. Sale was made East.

11th—Was or is money still borrowed upon them? if so, from whom and at what rate of interest, whether in gold or greenbacks?

Answer—Governor Stanford has borrowed money upon Placer County Bonds, but the Company are not informed from whom: but suppose the interest to be ten per cent. With regard to Sacramento County Bonds, they are under the control of the President of the Company, and at present we cannot give you any information.

12th—What disposition has been made of the first mortgage bond; how many sold, and how much realized in gold?

Answer—Cannot give you any definite information. Some of them have been sold, but at different times and rates; but under circumstances, prices of gold changing, etc., we cannot give the amounts and prices.

13th—How many bonds have been issued, and the total amount of mortgage?

Answer—Total amount of mortgage, one and a half million. First mortgage bonds have been issued to the amount of one million two hundred and fifty thousand dollars.

14th—What is the present indebtedness of the Rail-road Company, other than mortgage; to whom owing, and at what rate of interest?

Answer—One hundred and fifty thousand dollars, paying interest at seven per cent on bonds, the balance at ten per cent; the Company decline giving any information as to whom it is owing, or the different amounts to each, and Messrs. Scott and Madden do not require the Company to answer the question in detail.

15th—By what arrangement has the work been performed beyond the first eighteen miles, to Newcastle?

Answer—The work was done by contract. Sections nineteen and twenty, Collins, contractor, received two thousand and forty-four dollars and eighty-four cents, in cash, and in stock three hundred dollars; and for the same sections, C. Crocker, contractor, received fifteen thousand two hundred and twenty-six dollars and seventy-five cents, making a total of seventeen thousand five hundred and seventy-one dollars and nine cents. Sections twenty-one, twenty-two, twenty-three, and twenty-four, Turtan, Knox & Ryan, contractors, received, in cash, twenty-five thousand seven hundred and seventy-six dollars and two cents, and in stock, four thousand five hundred dollars, making a total of thirty thousand two hundred and seventy-six dollars and two cents. Sections twenty-five, twenty-six, and twenty-seven, C. D. Bates, contractor, received, in cash, thirty-one thousand two hundred and twenty-eight dollars and eighty-eight cents; and in stock, five thousand five hundred dollars, making a total of thirty-six thousand seven hundred and twenty-eight dollars and eighty-eight cents. Sections twenty-eight and twenty-nine, S. D. Smith, contractor, received, in cash, forty-three thousand three hundred and thirty-

one dollars and sixty-four cents, and in stock seven thousand six hundred dollars, making a total of fifty thousand nine hundred and thirty-one dollars and sixty-four cents. Sections thirty and thirty-one, C. Crocker, contractor, received in cash, sixty-five thousand five hundred and thirty-seven dollars and forty-two cents, and in stock, eleven thousand six hundred dollars, making a total of seventy-seven thousand one hundred and thirty-seven dollars and forty-two cents.

RECAPITULATION:

Sections 19 and 20,	$17,571 09
Sections 21, 22, 23, and 24,	30,276 02
Sections 25, 26, 27,	36,728 88
Sections 28, 29,	50,931 64
Sections 30, 31,	77,137 42
	$212,645 05

16th.—What amount of cash, stock, or bonds have been paid for work beyond Newcastle?

Answer—Work beyond Newcastle is being done by the Company.

17th.—Does any contract exist, and, if so, with whom, for work beyond Newcastle?

Answer—There is no existing contract for work to be done beyond Newcastle.

18th.—What is the amount of monthly estimates for work now being performed, or graduations, with the price paid for such work?

Answer—We will not give you the answer, that it may be used by our enemies.

19th.—Who is building the telegraph line? what price is paid for the same, and how is it paid?

Answer—The telegraph line was built by the Company, and by days' work. Cash was paid for the same. The whole cost will not amount to———well, we do not wish to give you the information.

20th.—What settlement took place with T. D. Judah, your late Chief Engineer; also Mr. Bailey, your late Secretary?

Answer—T. D. Judah was paid his salary, as to his bonds, etc., that was an outside matter. No information with regard to Mr. Bailey.

21st.—How many bonds, and of what denomination, were paid to Crocker & Co., with the numbers of the same?

Answer—A protest was here offered against allowing extracts to be taken from the books, to be taken from the office.

22nd.—What remuneration is paid, or has been paid, to C. P. Huntington, or what agreement exists to remunerate him for services East?

Answer—We do not know what we shall pay Mr. Huntington; we expect to pay him, and pay him well.

23rd—What are the salaries paid employès, and what are the daily receipts of the road and the daily or monthly expenses?

Answer—Company refuse to allow abstracts to be taken.

24th.—What are the amount of legal fees, and to whom are they paid—whether in cash, stock, or bonds?

Answer—We cannot give you the precise amount; think not over one thousand dollars; cash has been paid.

25th.—What has been the total cost of the road to Newcastle?

Answer—Could not get at the cost of the road to Newcastle; it would take too much time, and we couldn't do it.

26th.—Has any positive location of the road been made beyond Illinoistown? If so, what is the schedule of quantities of earth or rock excavations, or of different kinds of work to be done as far as located?

Answer—No positive location of the road has been made beyond Illinoistown. As for estimates with regard to earth or rock excavations, or of different kinds of work, we refuse to give you the information.

27th.—Has any other survey been made across the mountains, except the original one made by T. D. Judah? If so, by whom made, and when?

Answer—No other line but the one made by T. D. Judah; we expect some changes to be made as we go along.

28th.—What are the present liabilities of the Company, to whom owing, and at what rate of interest?

Answer—First mortgage bonds, one million two hundred and fifty thousand dollars; individual accounts,

two hundred and five thousand seven hundred dollars; unadjusted accounts, two hundred and fifty thousand dollars. Abstracts not allowed from the books of the Company.

29th.—What amount of cash means have the Company on hand to continue the work, and what other means than cash have the Company on hand?

Answer—The Secretary will make a statement.

30th.—What is your estimate of the cost of the road to the State line? have you ever made one?

Answer—Report of T. D. Judah was offered.

31st.—How much iron has been purchased and paid for; how many cars and the description of them, and how many cross-ties?

Answer—Report of Secretary of the Company offered —no abstracts allowed to be taken from the books.

32nd.—How much cash, stock, or bonds, or securities of any kind, have been paid for bonuses on personal services, or for legislation in California or in Washington, or for election expenses in Placer, Sacramento, and San Francisco counties, and to whom were they paid?

Answer—Think not over seventy-five thousand dollars —not allowed any extracts from books, and Company refuse any information than their statement.

33rd.—Is there any arrangement between the Railroad and the Dutch Flat Wagon Road; has the Railroad any interest in it; has the Railroad advanced either money or credits to it; if so, in what shape?

Answer—Do not know of any money or credits advanced to the Dutch Flat Wagon Road Company.

34th.—Has the Company sold any of their lands; if so, to whom, how much, whether in large lots, and for what consideration?

Answer—The Company have not sold any of their lands except a small lot at Newcastle to S. T. Leit.

35th.—Has the Company bought any lands; if so, from whom, and the price paid, whether in cash, stock, or bonds?

Answer—Have bought a small lot of land at Junction, and right of way. Do not answer as to price and mode of payment.

36th.—How much interest money do the Company pay on their present mortgage debt?

Answer—We cannot give you the information at present.

37th.—How much stock has been subscribed by Stanford, Huntington, Hopkins, E. B. Crocker, and the rest of the Directors, and whether or not they have paid up the amount of same in cash, in full?

Answer—Company refuse allowing abstracts to be taken from the books showing the delinquencies.

38th.—What is the total amount of stock issued, including Sacramento and Placer counties?

Answer—The Secretary will give a statement.

STATE OF CALIFORNIA, }
COUNTY OF PLACER. }

James R. Rogers being duly sworn, deposes and says that the foregoing report is true, and that the accompanying list of questions and answers is a true list and report of the questions propounded and the answers given on the said examination therein mentioned.

JAMES R. ROGERS,

President of the Board of Supervisors of Placer County.

Subscribed and sworn to before me this 19th day of September, A. D. 1864.

D. W. SPEAR,

{ L.S. } County Clerk, with the seal of the County Court of said County affixed.

[Internal Revenue Stamp. 5 cents, canceled.]

STATE OF CALIFORNIA, } SS.
COUNTY OF PLACER. }

This is to certify that the foregoing is a full, true, and correct copy and transcript of the Report of James R. Rogers, President of the Board of Supervisors of Placer County, and filed in my office on the 19th day of September, A. D. 1864.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in Auburn, this 26th day of September, A. D. 1864.

[SEAL.] WALTER B. LYON,

Recorder and ex-officio Clerk of Board of Supervisors of Placer County.

By JOHN M. CURRIER, Deputy.

[Internal Revenue Stamp, 5 cents, canceled.]

City and County of San Francisco, } ss.
State of California. }

James R. Rogers, being duly sworn, deposes and says: That he is the President of the Board of Supervisors of Placer county. That he was such President, and a member of said Board of Supervisors, on the 18th day of August, A. D. 1864. That on said last mentioned day, this affiant was appointed a member of a committee to act on behalf of the said Board of Supervisors and of the county of Placer, for the purpose of examining the books and records of the Central Pacific Railroad Company, so far as the interests of the county of Placer were concerned, in consequence of having become a stockholder in said Railroad Company; and it was made the duty of this affiant, as such member of the said committee, to report the results of the said examination to said Board. That afterwards, to wit, on the 19th day of September, this affiant made and filed his report to said Board of Supervisors, in writing, and subscribed the said report and verified the same by his oath.

This affiant further says: That he has read the foregoing certified copy of said report, certified by Walter B. Lyon, Recorder and ex-officio Clerk of Board of Supervisors of Placer county, on the 26th day of September, A. D. 1864, to be a full, true and correct copy and transcript of said report, and finds the said certified copy of the report to be a full, true and correct copy and transcript of the original report of this affiant, so made as aforesaid. This affiant further says, that he knows the contents of said report, and that the same is true of his own knowledge, and that the list of questions contained in said report is a true list of the questions asked and propounded on the said examination; and that the list of answers contained in said report is a true list of the answers made and given to the said questions on the said examination.

This affiant further says: That he is informed and believes that the said Central Pacific Railroad Company has never called in more than ten per cent of the capital stock subscribed and issued to the stockholders of said corporation as assessments on said stock. That of said ten per cent he is informed and believes that a large amount of the same is delinquent and unpaid, and that no effort has been made to collect the same, and of the moneys called in as aforesaid that a large amount has been wrongfully and fraudulently spent in procuring votes at elections in the counties of Placer, Sacramento and San Francisco, for the purpose of inducing voters to vote in favor of county and municipal subscriptions to the capital stock of said Central Pacific Railroad Company. JAMES R. ROGERS.

Subscribed and sworn to before me, this 29th day of September, 1864. I. T. MILLIKEN, Notary Public.

[Interual Revenue Stamp, 5 cents, canceled.]

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THIRTY-ONE YEARS OF CALIFORNIA

A SECULAR DISCOURSE

BY

THE REV. HORATIO STEBBINS, D. D.

On the occasion of the Thirty-first Anniversary of his Ministry in San Francisco,

SEPTEMBER 8, 1895

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THIRTY-ONE YEARS OF CALIFORNIA.

By the Rev. Horatio Stebbins, D. D.

A recent writer says that autobiography has a flavor of egotism, inasmuch as it implies that the author must esteem himself of considerable importance to himself and the world to write out the incidents of his own life and experience, as if any one beside himself cared anything for them, or could be profited by them. Such a criticism is, however, a little acetic, and ignores altogether that fine simplicity of mind and heart with which those who have had a real human experience may record it, as a contribution to the current wisdom and truth of their time. Biography too, is, the literature of individual life; and, if a man is level-minded enough to tell his own story, as moonlight falls on a placid river, he may make substantial contributions from his own life to the life of his time. A truly fine autobiography is, in my opinion, a great writing, whether it be in the allegoric style of John Bunyan, or in the homespun way of Benjamin Franklin, or the simple, brave talk of General Grant. We get introduced to individuals so, and we live with them a while, and get acquainted, and learn more than travel can teach.

But such is not my affair this morning. I have little or nothing to say of myself. I wish only to say how things and men have looked to me as I have passed through the scene of thirty years or so, and to give a

little estimate,— I will not call it a judgment,—or general result of experience.

Let me glance briefly at the material progress of California. I offer no tabulation of property or of products. I wish only to glance at a general fact. The discovery of gold gave inspiration to the pioneers, and it seemed that the country had no other value than that deposited in the mountains or along river-beds. The land was dry and hard, and the climate was new and strange to Americans. Few attached any importance to the agricultural value of the country, and the brilliancy of the precious metals obscured every other interest with dazzling light. Horace Greeley thought the country was only for mining, and that Marysville would be the centre of its wealth. But it has turned out that the agriculture of the country is rich beyond precedent, so that a farmer at the annual national thanksgiving-time questions whether he has any cause of gratitude in having more than he can sell. This feature of the country has played a very important part in the development of the State; and, while it is a surprise, viewed from the standpoint of the miner with his pick and shovel, it has been a disappointment also to the farmer from the standpoint of the plow. The accounts of wonderful production and marvelous wealth per acre had the effect, at one time, to make agriculture, the most conservative of all human industry, highly speculative and dazzling. The truth is, that agriculture, lying flat on the earth as it does, the bottom industry of society, is a very sober kind of business, and will not allow flights of fancy. It is a patient, careful, frugal vocation, wisely provided in the education of the world for the training of men by good habits of industry and economy. The development of machinery, and the application of animal

or steam power to the cultivation of the soil, has had the general effect — temporarily, we may believe, — to demoralize this great common vocation. It does very little toward "settling up" the country, or establishing society. It does not cultivate family life, and it makes labor fitful and dissipated. While it is a natural and, perhaps, necessary result of what may be called the application of machinery to a conservative pursuit, it has a tendency to correct itself by over-production, and to turn labor into other channels. It is true that fifteen men and a hundred horses, with machinery to match, working a part of the year on two or three thousand acres of land, do not have a great social effect in establishing communities or increasing the populations of a country, but they are better than rabbits or coyotes.

While there has been a steady development of agriculture, and a marvelous power of production, it is fair to say that the expectations of ardent minds, in regard to what is called the development of the State, have not been fulfilled. I think that a dispassionate, judicial, historic mind, if you please, will confess that the growth of California has been a disappointment. It has not been as great as we expected; certainly not as great as we hoped. Indeed, I think this may be said of the whole western coast, though the causes are not the same as with us here. Twenty-five years ago, men who were as sober as the rest of us prophesied that there would be five millions of people around this bay in a quarter of a century. After the opening of the first transcontinental road, it was said that there was as much land in California, including climate, worth one hundred dollars an acre for production, as there was in the Republic. And, twenty years ago, it was thought that this city was destined, in

the near future, to be the richest in the world! So we imagined, and so we talked.

And now I come to the quick and nerve of life, society, and manners, as they are here. Why has there been this over-expectation, this sanguine hope, this innocent credulity in regard to the material growth of the State?

I said, incidentally, on a former occasion, that no just conception of society here could be formed without taking into view the fact that, historically, the State is founded on the presence of the precious metals. It has been said that new discoveries of gold in the earth have kept pace with expanding commerce on the sea, and this has been regarded as one of the tokens of Providence in history. But not the discovery of gold only has this providential relation to the wants of man and the progress of the world. The discovery of iron, lead, copper, and tin have no less, but far greater, influence upon the industrial life of man, and are much more common in relation to his wants and to the progress of the world. But gold is value ready-made; and he who has it, by a kind of moral fiction, is rich. Hence, the gold-passion, as old as human nature, to take a short cut to wealth. Historically, the discovery of gold on these shores has been a great good, for without it this western civilization had not been; but, individually and socially, it has been attended with great evils. Let no vague censures be pronounced on the past; no cheap denunciation of those methods of history by which God causeth the wrath of man to praise Him, and the last of it he restrains. Oregon was settled before California, and the government paid a premium on marriage to hold the country. New countries are settled by *rude* methods, and one of the most cheering views of man's estate on earth is that

order and law and social beauty and refinement have risen from beginnings so humble, so rude, or so wicked. Nations, those great divisions of the human family, that seem to hold in their grasp the fortunes of the race, are made by war. The arts and refinements of life are attained only through the most fearful moral and physical exposures of vast multitudes of men. What an army of soldiers and sailors, and diggers and delvers, and tenders of hell-fires on land or sea, make it possible for us to live in a comfortable house, have a decent breakfast, under the protection of laws and manners! Whatever impression these things, and such as these, may make on us that this world is not finished yet, they are so, and have been, and will be.

The historic fact is, that the presence of the precious metals in the earth is one of the heaviest moral trials to men who are brought into close contact with them. The strange mixture of chance and rapid accumulation unships the mind of the average man from all the fastenings that make the great ethic of property and give it established relations to character. The mind follows a will-o'-the-wisp, or becomes itself a Jack-o' lantern. The man is intoxicated with the notion of having something for nothing, and his credulity swallows the moon, and he floats over seas from whose depths he hears the bells of sunken cities. A fascinating contagion sweeps through society, industry is swamped in speculation, modest frugality is ashamed in the presence of extravagance, and sweet benevolence is drowned in the tempestuous flood of thoughtless and unprincipled generosity. Individuals here and there may go untouched, as some enchanted house escapes the plague, but the common air is filled with vapors. This spirit, natural, inevitable as human

character is, had its full sway here; and it is one of the honors of American society that here, within half a century, has been established a commonwealth, with institutions of law, learning, and religion, that promise to give rank among the States of the world.

This spirit of speculation — gold-passion, if you please,— culminated in 1875, in the failure of the Bank of California. The restoration of that institution was the beginning of a new era; and, since then, the State, with diminished splendor to some eyes, but with steadier power to discerning minds, has been living out of its past. There is a habit of complaint among us, and fortune handles some very rudely; but there are few countries on earth where industry and frugality bring better rewards. The State is still new, and its population is small, and distances are great, even with modern ways of travel. But if we inquire into the facts of transportation and production, they are very striking and wonderful. I do not know where, on any continent, or in any country with a population of 1,250,000 and an area of 160,000 square miles, there are such facilities for the physical wants and comforts of men. The climates, through latitudes and longitudes from the soft south to the snowy north, from seashore to mountain range, are friendly,— too friendly, it may be, to challenge man's courage and resistance. To what extent climate, that powerful factor in the constitution and destiny of races, is to modify our modern civilization here, it is impossible to tell. We must face the fact that, thus far in the history of the world, cold weather has been the wise stepmother of men. What new invention, what cosmopolitan art, can give energy to lassitude, will to indulgent ease, and economy to carelessness, we do not know. The base line

of material progress is industry and economy. This explains the fact that a people with a stingy soil have gathered more, often, than those where prodigal nature has strewn her neglected gifts. These are encouraging signs of increasing industry and economy, though we still affect to despise a cent, while the Treasury of the United States can count it and keep it. Let us remember, when we see in prophetic vision the noble future before us, that no people on earth are industrially or commercially great who have not abundant room in their pockets for a cent, and time enough to count it before they let it go. Laugh at it, ye throng of fools, turn from it, ye host of beggars: economy is to prosperity and honor what virtue is to the soul. It may have a rough exterior, it may not be in the latest fashion, but the woodsman who lays his axe at the root of a fire-scorched tree often finds that it is sound at heart.

One more word in this line. A well known citizen said some years ago that we had many devices, or schemes, of prosperity, but there did not any of them hold out. I once talked with a man who was the owner and manager of one of the finest ranches in the State. Among other rich products the most beautiful butter was made and sold at ninety cents a roll of two pounds, two ounces short. I asked him how long this was going to last. He replied that there was no reason why it should not last forever! I remonstrated that I could not understand how agriculture, most exposed to competition, could sustain such prices. He did not agree with me. I was not in the dairy business then, nor am I now. I do not claim to have any knowledge about it. Many of us remember what plans, enterprises, industries, and speculations have been devised "to bring us out," and set the State on the highway of prosperity. We have been in a

kind of experimental stage, trying everything, and while so many things have failed, come to an end, or been overcome, there has been a steady progress. The country was new to American habits, and it was far away. We have found that it is richly fitted for many things of which we never dreamed. There is one culture, however, the influence and value of which are not yet decided. I mean the cultivation of wines and brandies. What the final influence and result will be depends on future experience. Alcoholic liquors are a large item in the business of the world, attended with many dangers. It is a legitimate business, like the manufacture of dynamite, but the handling and sale should be conducted in a manner to protect society from its dangers. I do not notice an extraordinary number of drunkards, but there is an unusual number of heavy drinkers. Thirty years ago, the income or stamp tax on whiskey in this port yielded a greater revenue than from any other equal population in the country. In former years, there was a man here who kept a fashionable saloon, who told me that he had customers who drank eighteen glasses in a day, and were always sober. It has been estimated that in the future development of our State, the wine product will amount to one hundred million dollars annually. If so, that industry will be a great moral and social danger, which a high public morality will ever look upon with fear, and protect itself, as best it can, by wise and just laws. Thus far, the American and the Frenchman do not meet on equal terms; and I am told that a Frenchman, accustomed to wine and bread in his native vineyards, when transported to California, is not content with that frugal and temperate repast. In this city, among a heterogeneous population, there are more saloons, per

capita, than in any other city in the Union; and no power has arisen yet to restrain a business which probably makes more money, on the capital invested, than any other business, and costs society more than the leather, iron, and flour trade. The cultivation of wine and brandy will be second only to the influence of climate on the destiny of the State. But it may be reasonably hoped that other industries, not less important, will modify that, and give it a secondary importance in the development of a great commonwealth. At present, we are quite inclined to use the name of the State as an adjective in the superlative degree. Time will chasten our judgment, and we shall be satisfied with an honorable place among the States of the Republic.

An important and striking influence in the development of the resources of the State is the rapid increase of the means of communication. Not long ago San Francisco was twenty-four days from New York, and passage money four hundred dollars. The time has been reduced to five days and ten hours, and the traveling fee to less than one hundred dollars. The first and immediate influence of this transcontinental communication was to introduce some modifications of business methods, and bring affairs to commercial equilibrium across the country. The commercial spirit of business, long-minded, and laying its beams afar, came in collision with the provincial spirit, short-sighted, and near by. The theory of the minimum of business at the maximum of profit gradually gave way to the world-view of the maximum of business and the minimum of profit. To some this change seemed like the coming of the end of the world, and the heavens were passing away with a great noise, and the elements were melting with fervent

heat. The first continental road was a violent shock to our ways of business, which were the natural outcome of gold mining and provincial situation. The first road was the beginning of a new age; and, like all new periods, it found men as in the days before the flood, unaware of what was going on; and some did not see the ark. Facility of communication tends to the economic and commercial equilibrium of society, pools the world, and democratises nations. Like all great powers, it has its drawbacks here and there, but, on the whole, and through long stretches, it is the way of progress, the way of history. We hailed the open track across the mountains, and celebrated it with noise and processions and banners. It was the fulfillment of an enterprise that men had derided, and very naturally it gave pride and power to the projectors. Men in such position are rarely as wise as they think they are. Such is the infirmity of human character, and the public is not discriminating, though rudely just. It is no new thing for popular applause to be changed to complaint, or for power to be used without due sense of responsibility. It is not my purpose here to measure those two passions; I only refer to them as a phase of society, with this general remark, that they illustrate the spirit of business on the lines of relentless competition, that furnish no outlet to the fiery discontent that rages beneath.

But there is another influence of communication beside that of breaking into and flooding a provincial trade with the tides of commerce. There are four roads across the mountains to the sea. We have had the opinion that this port and city were the centre of commercial distribution for this western coast from British Columbia to Mexico, and inland to the Sierras. When the northern

road was opened it was thought that it would have no effect on the trade of this port or city. The practical result has been that our area of distribution north and south has been reduced from about two thousand miles, to say six hundred miles, and freights by overland carriage are no longer brought here to be sent back into the mountains, but are distributed along the road, after the fashion of country pedlars who bring their goods to the door, in the most economic way. The result of all this is to make this a retail city for a comparatively small population spread over twenty to fifty thousand square miles or so. The amount of goods that pass in transit does not contribute much to our wealth—nor can it be reckoned as an item in our commerce.

If we take stock now, this is about our situation. The gold-passion is exhausted by its own excesses. The mining interest, a business uncertain beyond the uncertainty of business in general, is, and is destined to be, an important item in the productive industry of the country. Agriculture is passing through its wild stage of cattle, and thousand-acre farming, to all precious fruits, and wine and oil. Manufactures are slowly developed, handicapped yet by the conditions of labor and transportation—while commerce sits pensive and thoughtful, her hands folded upon her lap, as she looks out upon the vacant, glassy, sea. Our situation is the natural and inevitable outcome of our history. Far away on a lonely shore, before the bare and rugged face of nature, in the presence of the precious metals to which men of all races and tribes flee as birds of prey to their quarry, there has been established society, without a parallel in the history of our own country or of any other country.

We have come at length to a period in our history,

when, chastened by experience, more moderate views succeed extravagant expectations. Sober men feel that the development and growth of the country must go on in something like historic order and not by a rush. Though we never should have been here, and the sea would have dashed idly on the shore, had it not been for the gold mines, we cannot stay on that account, or rear a powerful State. We have had many symptoms of exhaustion, many schemes of deliverance, many plans of prosperity. It seems to me that while we accept the former days, and give them all honor for the part they acted in the drama of history, we must go on out of that past into the sober industries and frugalities, that underlie solid wealth, and make competence and independence. I have no special wisdom concerning the future. The only thing that I feel sure of, is principle, moral principle. There are those who are quite sure that something is going to happen before long, just as we thought that the overland road would make us blest, and fill our valleys with happy populations, or as the rich and prosperous dairyman thought he would wet his steps with butter at ninety cents a roll, two ounces short. But I have a deep conviction that no such happening is going to be. What are called improvements will go on—the great canal will be digged for the ships, the mountain rivers will pour their floods upon the arid soil, and tumbling waters will transform their power to electric light and power—while easy transport from the valleys to the sea, and from the sea to mountain heights, will give the people change of air and scene, and thus minister to industry, frugality and gentle manners. The material development of the country will be relatively slow. No grand enterprise will work like a magician's spell, to leap our shadows, or take a short cut

to destiny. The tide of population will be turned to this vacant realm when it is shown that our lands will yield competence and comfort to small owners, of good habits and little money, and our rich products can find the markets of the world.

When I look upon a map of the world, or on a globe projection of the earth, I am impressed with what seems to me our inevitable destiny and the part our common country is to play in the drama of history—I mean our relation to the Asiatic races. I have always been of opinion that the development of this western coast of the Republic was closely allied to the awakening of the sleepy Orient, and modern years have strengthened my conviction. It is less than half a century since the guns of England made the first breach in the Chinese wall. That was the proclamation by the race to which has been committed the highest civilization of mankind, that no nation can shut itself up from the world. One-third of the human race hitherto withdrawn from the communion of nations and men, have joined the human family. Can it be that we here are to have no part in this great action? I cannot conceive it! I do not understand history so. I cannot lift the curtain that hides the future, but as the past bears the signals of a guiding providence, so the present flings out banners of the advancing God!

I have thus dwelt, too long, it may be, on what are called the material conditions, which were the beginning of society here. No just estimate of this western country can be given without taking inventory of the motives that inspired its first settlement, and of the great ground influences that gave it security. Those motives and influences, speaking broadly and historically, are the

passion for gold, the Constitution of the United States, and Chinese labor. Without the first, the country would not have been settled; without the second, it would have been a little fighting-cock government called a Pacific Republic; without the latter, there would have been no efficient working class.

And now I pass swiftly to the people themselves: the growth of society, opinion, education, and religion. Let us not boast, either because we were born here, or because we came here of our own will. Neither the coming or the being born is good ground of self-adulation. The early men of California were about the average men of mankind that have the traditions of law and order. They were subject to many vicissitudes and hardships, the will-o'-the-wisps of fortune, and the trials of dazzling success followed often by swift disappointment, such as takes the temper out of human steel. Their bones lie in many a mountain and valley grave, nor wind, nor sun, nor flowers of spring know their nameless rest. Thoughtful history alone drops a tear, and lifts up her onward song, "God having provided some better things for us, that they without us should not be made perfect."

Is there a "steady gain of man?" Is society more gentle and noble in manners and opinion? Is there a fresh flavor of uprightness and honor, wafted like iodyns from the sea, amid the bad odors of public morals? Are there any summits to which we look up as to a brighter and purer air? The plane of humanity at large is public opinion — always low compared with a noble individual standard — and dependent on higher minds to lead it forward to higher fields. In a country like ours, the press is a tolerably true gauge of the average intelligence, refinement, and morals of society. A journalist, of all

men, adapts his work to society as it is, rather than to society as it ought to be. He gives what is most wished for, and what is most readily paid for. Thus, the stranger, the man of cosmopolitan mind, forms his opinion of the character and manners of the people as he reads the morning papers at his breakfast-table. The press is often careless of the truth, sometimes vicious, and often honorable. It is on the whole a fair reflection of society as it is. If not as ably conducted here as in former years, it is less bold and less wicked. The taste for the sensational, the horrid, and the criminal is very striking, and out of proportion with freedom or public duty. We have in this city and State a bad reputation for crimes of violence and passion — the list is appalling. But I am confident that the working up and detail of wickedness in the press, while in no sense required by public duty, does much to increase the impression of immorality and crime. The press also too often takes up the business of the court, and tries the case by a public discussion, that has no judicial mind, and no evidence that would be admitted in an honorable and just tribunal. The press is too exclusively given to making money to be truly high-minded. I do not say that it ought not to make money, but when money-making is the chief or only object, it relinquishes the high trust of educating the public mind, and guiding public opinion, and becomes the retailer of small gossip, and the scavanger of social scandal. A personal incident happened to me thirty years ago. Will you pardon my rudeness? It is a part of the scene. A manager of a paper devoted some time and space to vituperation and abuse of me. On a day I was introduced to him. I said to him: And you are the man that has spent so much

time on me! You are as mild a mannered man as ever scuttled a ship! But what is your idea of journalism? To which he replied: "Steaks from the golden calf"! I answered: When you come to the gallows I will be happy to be with you in your last moments. He treated me very politely ever after.

But let us remember, there are two sides to this, as there are to some other things. The press here reflects the public; the public makes it, and we pay for it. The press is the mirror of society, and if we do not like the look, we must improve our figures and complexion. It is the fashion to run down society, and to shift our responsibility as good citizens onto the public or the press. And we hear society abused, and this city blackguarded as the worst and wickedest city. That public opinion is low there can be no doubt; that there is much violence and crime is appallingly apparent; that there are dens of drink and lust, and loud manners, and vulgar wealth, is manifest to every observer. While to one of misanthropic temper or provincial experience the city seems a steaming heap of moral compost.

But any such view is quite inadequate. There is nothing here to prevent any man from living nobly in honor and virtue, and there are here as good-natured people as are on the earth. To the profound observer, human excellence is not on the surface of the world, nor is it most noisy. It is a silent power, like the sun, or like the seed cast upon the earth—it swells and grows, and buds, and casts off its husks, rises toward the day and revels in the light.

One of the most striking things in society here is the provision that has been made by public care or private gift for education. The common school has become a

part of the common understanding of American society; and a free state without it would be a kind of political monster. The great impulse that has been given to education during the last thirty years, the enlargement of the area of human knowledge, the extension of man's spiritual power over nature, and the idea of law as cause and effect, have opened new paths of thought, and new fields of action. A higher intelligence is required for the common arts and industries of life, and the expansion of studies to the dignity of something like liberal arts, is the characteristic of our time. I believe that, according to population and period of political organization, no State in the Union has richer endowments than California for the pursuit of studies, either beyond the common school age, or not included in the common school course. The establishment of the University of California is one of the important events of the last quarter of a century. The more recent establishment of Stanford University, by private endowment, is an illustrious instance of far-seeing public spirit, to be perpetuated in a great and powerful institution. These two institutions, at no remote day, will have a resident pupilage of ten thousand students. Besides these, the Cogswell, Lick and Wilmerding Technical Schools, are creations of opportunity and influence that will be profoundly felt in their effect on individual lives, and on the arts and industries of society. The remedy for the ills and wrongs we suffer is education in that large sense that includes the moral and intellectual nature of man, and relies on the evolution of the individual for the renovation of society. And this brings me to my last word, religion.

About one-fourth of the people of California belong to the Roman Catholic Church. They are not devotees, but

are bound by tradition to that division of Christendom. The rest of the population are divided among the different sects of Protestanism, and that large class who, without special religious affinities, have the natural moral and religious instincts of humanity. One of the common mistakes in regard to the influence of religion, and of religious institutions, is, that there is but a portion of the people who have any active interest in religion or the Church. Perhaps the true test of the importance and value of religious institutions would be to abolish them altogether. Imagine if you can a city, a State, or a nation in which there is no expression of religious sentiment, no prayer offered, no teaching given, no song, no counsel of sympathy, trust, or hope. To imagine such a condition, pictures society bereft of its loveliest sentiments, the individual as merely one of the animal creation, and the grave a pit. The primal interest of religion is with the individual, through the inspiring power of personality. It is forever, the "fifty righteous in the city" that saves the city. Let all secular movements go on, to relieve the stress of circumstances; the real source of energy is found in personal character, in the actual excellence and virtue that radiate from high and pure lives. No more vague and senseless notion ever possessed an honest but ignorant mind than the notion that the machinery of things will do the world's noblest work. All excellence, all renovating powers are finally vested in persons. And there can be nothing in a nation or a State or a city, however exalted its aims, or however perfectly organized, which is not in the persons composing the city, the State, or the nation. An ultimate standard of worth is an ideal of personal worth. All our inspirations, all our visions of eternal beauty are visions, re-

membered glances of persons, or some ineffable glory of Him, all good. To speak of any progress or improvement or development of a nation, or society, or mankind, except as relative to some greater worth of persons, is to use words without meaning.

This eternal moral and spiritual fact is the basis of religion, and of institutions for worship, prayer, and teaching. Man's nature overlaps this outward scenery of life and experience, and there are capacities in the human spirit not realizable in any conditions that we can conceive on earth. Our faith in that infinite Person, like ourselves, though infinitely above us, is justified by gleams of suggestion that a life lived here under conditions of limitation that thwart its full development, shall be continued in a society where the complete measure of our capacities shall be attained.

To this end is religion and its institutions — to set in operation moral agencies, not through the impersonal machinery of society, but by the presence and contact of good men and good women in the city, the State, or nation.

To this end every true teacher and preacher of religion is born, and to this end he comes into the world: to be the interpreter of human life in its sublime relations and terrible glories. This is my thought, my view, my convictions. How feebly I have filled it out in these years of the lifetime of a generation, I know, and God knows. But in no folly of self-adulation, but in deep and tender humility, this has been my aim; and my honor and respect for you are that you have sustained me in it, by your steadfast hearts and by your vision in the mount. I am and have been among you a much employed man. I have not withheld my hand or my heart as a minister, a

man or a citizen from any human interest, within the reach of limited capacity and prescribed duty. And my proud humility and gratitude are, under God, that men and women from every condition and circumstance of life have come to me simply because they thought I was human. If I could call the roll of those here or there or beyond, they would answer from near and far. Pardon this allusion to myself that is rather an expression of my gratitude than my pride. If life and strength are given, I may render you better service yet, the riper fruits of experience, some clearer vision of God.

Now, unto him who is able to do exceeding abundantly, above all that we ask or think, according to the power that worketh in us, unto him, be glory throughout all ages, world without end—Amen.

(CAL.)

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SIXTH

ANNIVERSARY ADDRESS

BEFORE THE

Sacramento Society for Medical Improvement

MARCH, 1874,

BY F. W. HATCH, A. M., M. D.

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BEFORE THE

Sacramento Society for Medical Improvement.

BY F. W. HATCH, A. M., M. D.

GENTLEMEN:—We meet to-night upon the occasion of the sixth anniversary of the "Sacramento Society for Medical Improvement." I congratulate you, gentlemen of the Medical profession, upon the success which has, thus far, crowned our efforts, and the bright promise of the future. We have lived long enough to feel that we rest, at last, upon a firm foundation. It is an experiment no longer, but an assured and gratifying fact. We have passed the period of childhood and dependence, and stand erect in all the confidence of youthful but vigorous manhood. Profiting by previous experience, and the unfortunate fate of other medical societies, we escaped the shoals upon which they had foundered. We adopted our organization different from any that had preceded us. We set out upon a new, and perhaps, original plan, a sort of "free love" association, without the objectionable features of such communities—a medical union for the common weal, for professional improvement first, and incidentally for social enjoyment—a society from which clanship, and rivalries, and jealousies were to be forever banished. We met together with the determination to lay aside and bury in oblivion, the bitterness and estrangements of isolated existence, and joined hands on that eventful night, the 17th of March, 1868, in a league of fraternal sympathy and perpetual amity. Right nobly has the pledge been redeemed.

The objects of associations like this are two-fold: first, the cultivation of the social qualities—to draw out the finer attributes of human nature, which, left to themselves, are wont to dry up and wither, and become at length bedwarfed, deformed and degenerate; and secondly, the improvement of the mind—the advancement and elevation of the profession to which our lives and energies are devoted. These two objects are inseparably associated here. They constitute the very basis of our existence as a society—the pabulum which has nourished and sustained us during the past six years; and they can never be lost sight of, or disunited, without destroying the grand and characteristic features of our organization.

How have we succeeded? Have these two objects been kept in view? Let the history of the society answer; let the visible result attained, and the convictions of each member bear witness.

From a state of isolation, we have been brought into friendly association and union; suspicion has given place to confidence; the cold and measured courtesies of daily life and occasional intercourse have been warmed in the new life of unreserved and trustful companionship; the barriers which separated individuals pursuing, independently of each other, the same vocation, have been broken down, and man has learned to meet his fellow man as a friend and counsellor. Am I not right, gentlemen? And if so, has not our success, in this respect, at least, been commensurate with our most sanguine expectations?

This spirit of fraternity, of which I have been speaking, as existing among the members of this society, as one of its fruits, is something which the community, even its more intelligent members, cannot clearly understand. The world is so full of strife and antagonism; the walks of life are so crowded with eager contestants for superiority; the actions of men are so generally governed by selfishness and controlled by sordid considerations, that it is difficult for those engaged in other avocations to appreciate any very different state of things among us. They witness, or are informed of its

results, but how it happens that among so many conflicting interests, among a score of men, each pursuing the same occupation, dependant alike upon popular favor and support, each striving to build himself up in public confidence, and earnestly working for fame and fortune, there should still be maintained a spirit of co-operation, a jealous regard for the rights and interests of each other—with no under-valuing or under-bidding—is a problem which the accepted theories of ordinary business cannot solve, and which finds no explanation in the logic of commerce.

Only a few days ago, a gentleman of quick discernment in business, and admitted intelligence, was astonished, and not a little vexed, at my refusal to accept a fee and visit the patient of another physician, nor could he easily be made to believe that my conduct was not a gross violation of the principles of common humanity.

About the same time, a gentleman, by way of complaint against a bill for obstetric services which had been presented to him—a bill conformable to the lowest rates of our *Fee Bill* —said to me: "Why, sir, in our town the charge for such attendance is only twenty dollars, and yet there is no competition there!" Competition! The word itself, in its common objectionable sense, as an indication of opposition, of unscrupulous, narrow-minded and ignoble contentions among the members of our profession is unknown among the physicians of Sacramento! Competition! Look for it in the market-place and the stock-exchange; seek it in the haunts of speculators and the busy avenues of trade; find it steeped in bitterness, envy, selfishness and venom, among the charlatans and pretenders, who wear the livery and usurp the name of an honorable profession, but in the vocabulary of regular, legitimate medicine, it has no place!

There are several obstacles to the right solution of this subject, one of them growing out of the habits of thought of our people—the democratic tendencies of public sentiment and action. It is an unwillingness which every man feels to regard his neighbor's occupation better, or more honorable

or useful than his own. "You, sir," he will say, "may be a more thorough student than I have been; you may know more of the anatomical construction of the body, its physiological laws, the conditions of disease and their remedy; but in my sphere, in the business in which I am engaged, equally legitimate, perhaps equally essential to the necessities of society, as yours, I am your superior. I charge so much per day for my time and labor; I am content with a certain interest on the capital invested: why should you, with no visible, tangible capital at stake, demand more?" We have all doubtless heard this argument used, and exposed its fallacy. It is a fair illustration of the leveling proclivities of some minds when unbalanced by prejudice.

The difficulty, in all such cases, is that the public cannot readily understand the true relation of the physician to society, the real intrinsic and vital difference between the services *he* is called upon to render and those of any other class. These services are commonly regarded as something for sale, as a commodity having a market value regulated like other commodities, by the ordinary rules of political economy —the supply and demand—and by that other criterion, the time engaged, the minutes and hours occupied in their rendering. Those who indulge in these views are able to discover no distinction between gross, inanimate matter, the artificer in stone or metal, the day-laborer with his shovel or hod, and the physician whose care is the living organism, and to whose hands are sometimes intrusted the solemn issues of life and death. They forget that as the value of human life cannot be estimated, to the individual, upon a money basis, so can you not measure by any similar standard the services of him who, at the sacrifice of his own comfort and independence, often at the risk of life, steps in to assuage pain, to comfort the afflicted, to alleviate sickness, and cheer by his advice and counsel, the broken heart. Hence, as in the case just cited—and it is typical of others daily occurring—they fail to recognize or comprehend the philosophy by which our intercourse and amicable relations with each other are

governed; the reason for our refusal to supplant a brother in practice, or underbid him in the amount which conventional usage has established to be, in a strictly business sense, an approximately just remuneration for his time and labor. This can only be approximate and formal, for, as just intimated, the true, intrinsic worth of a physician's services is, and must ever be, graduated by the same scale upon which are delineated the appraisement of human suffering and the value of human life.

The second object to which allusion has been made as the more or less definite result of associations like this—the advancement of medical science—is not less important than the other: nay, it is in some respects of higher moment, for it is paramount in view of our relations to the public, and it is to this end that all our efforts tend.

How far we have succeeded in making our meetings subservient to this great object, individual experience may perhaps best determine. That it has not been lost sight of or neglected, the character of the essays read and the critical discussions which have followed, supported, as they have generally been, by individual experience and observation, afford conclusive evidence. These papers have been usually of a strictly practical nature; they have embraced topics with which we almost daily come in contact, and have served to invest with fresh interest the various forms of disease against which the physician in California must most frequently contend. Viewed in this light, I hesitate not to say that they have proved of far more value to us than many of the finely-wrought and highly scientific treatises which come to us in our books and journals, as the emanations of the old and distinguished societies of the chief cities of the world. These all have their value. They serve to keep us up with the progress of medicine and the current literature of the profession; they enlarge our conceptions of disease, its history, pathology and treatment as taught by the great masters of our art, and afford us oftentimes new and effective weapons of defense against a common enemy; but how seldom do they embody that prac-

tical information of disease as it is encountered here at our own doors which we can make available in our every-day conflicts at the bedside! It is on this account, I contend, that the less elaborate, possibly less scientific, yet strictly practical discussions to which we are accustomed to listen in this Society, and the brief yet pertinent recital of our own experience, possess for us a higher value, and are calculated to lead to more exact and profitable results.

The present, gentlemen, is emphatically an age of improvement, of progress in medicine. Even within the professional life of more than one of those present here to night, how many changes have been wrought, what revolutions have taken place! Within this period, less than the limit of a single generation, the lancet has grown rusty on your shelves. Then antimony and mercury were its necessary and effective adjuvants, and those, too, have become so restricted in their use, so repugnant to prevailing theories, and, possibly, so unfashionable, that few of us, in this climate at least, would venture to trust them even in their once favorite battle-ground—a case of pneumonia. Within this period of thirty years, chloroform has been discovered, and ether made available for anesthesia. Within the same time, the bromides have won triumphs which place them in the very front rank in the materia medica. Chloral hydrate has been introduced and glycerin, carbolic acid, iodoform and the hypophosphites; and many new combinations of the old standard remedies are presented for our use, possessing real and well-recognized advantages over the rude and simple and oftentimes unsavory forms to which our predecessors were restricted. Of the action of many of these older remedies new and more correct and intelligent views are entertained, giving them a wider application, and serving to mark emphatically the advancing precision of our profession—its gradual approach toward exactitude. Digitalis has been invested with profound interest by the recent demonstration of its beneficent action upon involuntary muscular fibre, as exhibited especially as a heart-tonic—its sustaining power over this

organ when enfeebled by disease or exhausting hemorrhage; the application of ergot has been extended and its irresistible power over capillary circulation made available in many abnormal conditions where this special action is desired; while even quinia, used and misused for so long a time, has exhibited a virtue as an antiseptic and antiphlogistic, as possessing a marvelous toxic action on the colorless corpuscles of the blood, which, in view of the recent investigations of physiology, invests it with a profound therapeutical interest which we are only just now beginning to appreciate.

But if in therapeutics these great results, within this brief period, have been accomplished, what can be said of the advances made in pathology, histology, and the practice of medicine; in surgery and gynecology. They are familiar to you all and need not be recapitulated. Those of us who buckled on the armor of the profession thirty years ago, may well be confounded and annoyed at the retrospect.

Within these thirty years, sanitary science has shaken off the confusion and indefiniteness which encumbered it, and recognizing the grand fact that in the discovery of the causes of disease its most glorious triumphs were to be achieved, applied itself to the amelioration of the social condition, to the removal and eradication of those varied yet mysterious forces which arise noiselessly and unseen within circumscribed areas and isolated districts, or sweep over nations with the resistless power of the pestilence. Perhaps no better illustration can be given of the success which has thus far attended its efforts than those alluded to by Aitken, as witnessed in England: "Town-sewering," he says, "with other social regulations, has contributed to prolong human life from 5 to 50 per cent. as compared with previous rates in the same district. Agues and typhoid fevers are reduced in frequency in the same district. Since 1840 an annual mortality in English towns of 44 in 1,000 has been reduced to twenty-seven; an annual mortality of 30 has been reduced to 20 and even as low as 15."

The warrior crowned with laurels won upon the field of carnage, sinks into insignificance when contrasted with the humble sanitarian contending against forces of whose existence he is sensible but whose subtle forms he has been unable to discover, reclaiming localities hitherto unfit for habitation, wresting from the miasma of decaying vegetation its power for evil, subduing the deadly emanations of sewers and cesspools, controling the march of epidemics and rescuing millions from the fatal grasp of the destroyer. The trophies of the one are crimsoned with the blood of victims slain; the crown of the other shall be the consciousness of human life saved, and the enduring gratitude of posterity.

And yet, gentlemen, the science of medicine has been pronounced to be stationary, unprogressive, old-fogyish !

It is for this society to bear its share in the great work which is going on; to refute the libel; to vindicate the character of the profession; and to devote exhaustless energies to the demonstration of the great and important problem of the cure of disease. The occasion and the circumstances in which we are placed are auspicious. We have in California a special field for investigation. Disease is often presented here in types and phases different from those once familiar in other States. We have an important duty before us in classifying and portraying in intelligible form those variations from a common type, and making known to the profession those other disease-forms peculiar to this State and climate. The State, too, is peculiarly adapted for the successful prosecution of some of the leading branches of medicine. Nowhere, so far as we can judge, do capital operations in surgery succeed better than under the conservative influence of our genial climate. The fact is, I believe, universally conceded, and it is especially true of our own local climate, as has been demonstrated by the success of many grave operations which, under less favorable conditions and surroundings, would have been considered hopeless.

For the pursuit of gynecological studies and the practice of this progressive art, no one who has devoted himself to

professional duties need be reminded of the frequency with which his attention is called to the class of diseases embraced under this title; and here, as well as in the practice of general medicine, I am warranted in saying, that we have among the fellows of this society, laborers devoted to the work—not followers only but originators—striving successfully for the advancement of their art, and to bring it up to a higher standard of usefulness.

I contend that there is no better or more efficient way of giving impulse and a proper direction to our labors, and of hastening the desirable results to which I have alluded, than by mutual consultation and co-operation in associations like ours. And here indulge me in the remark, that, in my judgment, the gratifying success which has thus far crowned our efforts to maintain an existence as a society, and to perpetuate the spirit of fellowship and concord which so happily prevails, has been mainly due to our peculiar form of organization, to the free, unrestrained intercourse which it invites, the informality of its proceedings, its social gatherings at each other's place of business, and the pleasant interchange of hospitality which custom has sanctioned. I know there are many present who will agree with me, that it is not to any one of these several elements, but to all combined and happily associated, that we owe the stability of our society. If this be true, let us, after the injunction of the great apostle, hold fast to that which is good; let no spirit of innovation disturb its foundations, but let it continue, as in the past, to join improvement in professional attainments with the cultivation of friendship, to mingle the "feast of reason with the flow of soul," to blend the solid realities of business with the pleasant and scarcely less profitable amenities of social intercourse.

> "Blest be the spot where cheerful guests retire,
> To pause from toil, and trim their evening fire."

In conclusion, gentlemen of the society, let me thank you for the kindness, the many manifestations of forbearance and friendship of which I have been the recipient during my official term.

To say that I consider it an honor to have been for so long a period the presiding officer of this body, would be but a cold and formal recital of an equally formal and hackneyed phrase. But there are emotions which we cannot express. There are feelings, deep in the heart, living, breathing, pulsating, which will not take form at our bidding and clothe themselves in words. Yet I should be doing myself and the occasion injustice, did I not venture the assurance that the relations sustained with the society have been among the happiest of my professional life. My official connection with you, gentlemen, gratifying in itself, and worthy of an honorable ambition, has been rendered doubly so by your generous forbearance, and the manifold tokens of your kindly appreciation. "*Forsan et hæc olim meminisse juvabit.*"

Before taking my seat, brothers of the society, let me again thank you for the confidence you have evidenced in having so often elevated me to this distinguished position. Let the mantle of your esteem now rest upon another. Give to him the same generous support of which I have been the recipient, and be assured of my hearty co-operation, my earnest and zealous efforts in all that may be calculated to advance the interests and promote the welfare of this society.

CITIZENS' MONEY.

A LECTURE BY

ALFRED B. WESTRUP,

On the "National Banking System." Delivered in Chicago and published in "Liberty," of Boston, in 1888.

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INTRODUCTORY.

In no popular idea does the unevoluted tail protrude farther from beneath the covering of civilization than in that regarding money, and in no case does the donkey faculty of following a beaten path more seriously injure the material welfare of all than in this.

Gold and silver were malleable, glittering, and scarce, therefore to the savage mind of primitive man they were more desirable and precious than any of the few things he possessed, and were in that degree more exchangeable. The glitter, that which because of its loudness holds the attention of the infant mind, naturally constituted its greatest desirability, and is almost the only use it would have today but for this primitive fancy growing into a "time honored" superstition which gave these metals the monopoly of our medium of exchange. On this crude, frog faculty, the love of glitter, then, is based the popular idea of the only means by which we may effect an exchange of the products of our multitudinous division of labor. This childish fancy, through the brute force of political authority, has posited the average intelligence of this age as maintaining that all kinds of property must be exchanged for one particular kind before its value can be had in some other kind different from it and also from this peculiar kind for which the original was exchanged; this must be done whatever be the cost of this particular kind. If an individual wishes to use his property as security for a fractional mortgage to obtain credit of various amounts among his neighbors or others, he must first resolve it into this one kind of property, no matter how much more of the original property is required to procure a sufficient amount of the needed credit, nor how willing his friends be to receive his original security instead. There is no escape, he must use this particular kind or be deprived of capitalizing in exchangeable form the unconsumed product of his labor. All this is due to a "representative" tyranny which prohibits the use of such fractional mortgage by imposing a tax of ten per cent on any currency not secured by

the peculiar metalic property, which necessarily gives the holders of this favored kind a monopoly over all exchange, and with which they may tax industry as near the verge of extinction as they may desire, and thus absorb all other kinds of property without any exertion save that of keeping this monopoly intact. That this is the case we have but to look around us to see.

The remedy lies in the abolition of this monopoly, and the adoption of something like the credit or money system set forth in the following pages by Alfred B. Westrup, in a lecture delivered in Chicago in reply to a defense of the National Banking System by Banker Lyman B. Gage. This lecture was printed in "Liberty," of Boston, in 1888 under the title, "The National Banking System," from which journal it is reprinted in this pamphlet. It is the most popular exposition of the subject in a short space of which the publishers know, and as it is next to impossible to get an indifferent public to read economic literature at all, it is believed that this short treatise printed in large type, will be more attractive to beginners than the longer ones and lead them to read all the excellent matter on the subject of Free or Mutual Money. Among this is "Mutual Banking" by William B. Greene, "A New System of Banking" by Lysander Spooner, and "The Principles of Monetary Science" by the author of this lecture.

In denying the claims of the National Banking System as the best means for furnishing an exchange medium, Mr. Westrup has affirmed another system which the publishers are interested in propagating, and in order to give it the positive form, have taken the liberty to publish it under the title of CITIZENS' MONEY—a money which, under freedom, the citizen could have issued on his security without being subjected to monopoly's toll, or tyrannical dictation as to kind, so long as it be ample.

It is earnestly hoped that the reader will carefully study this idea, which is believed by the most advanced students of social science to be the first step in the direction of industrial emancipation—the breaking in of the formidable wall of privilege, which robs labor and crushes liberty.—[THE PUBLISHERS.]

CITIZENS' MONEY.

Mr. George Easterly, of Whitewater, Wisconsin, has recently (1887) issued a pamphlet entitled, "Review of the National Bank System," as to how and why it should be continued.

In his preface he says: "This question of finance has received comparatively little consideration. Within the last few years the press and a few members of congress have attempted to discuss it to some extent, not always, however, with much skill. The business world, as a rule, have not given it much attention." It is strange that the experience that results in such an admission should not have prompted a more profound research than we find in his essay.

Mr. Easterly falls into the error common with most political reformers, in supposing that natural laws have nothing to do with the question; that human rights are created by and subject to constitutional provisions and legislative enactments, instead of constitutional provisions and statutes being subject to human rights.

The present or National Bank system is founded upon this idea,—that congress is authorized by the constitution to regulate the issue of paper money, and hence had the right to establish it. and that the individual must shape himself to the system thus provided.

I shall not discuss the question as to whether the constitution does or does not confer such power upon congress, for, if it can be shown that the operations of supply and demand will furnish a safer and a better money than the arbitrary system established by the State, it is but additional evidence that progress

and institutions are ever at war, and that to attain the one we must sacrifice the other.

It would seem as though a "free people" would hardly have allowed such a mixture of "royal prerogative" and "infallibility" to be dressed up in a republican garb and imposed on them as "majority rule." How can a majority of the people be said to be intelligently in favor of the existing system, when as a matter of fact they are utterly ignorant of this, as well as all other systems, and do not even know the laws by which it is kept in force, much less the effect that it produces.

What right, I ask, has the State to regulate the supply of the medium of exchange we call money any more than it has to regulate the manufacture and supply of bricks, bread, cloth, or any other commodity, or how much a man may buy on credit? It was one of the "functions of royalty" when the people of this country threw off the yoke of British rule, and as the question of finance had received even less attention then than now, it was easy for the error to insinuate itself, and become a part of the constitution, that the State should supervise and regulate the coining of money; but does it necessarily follow that, because the constitution says so, therefore it is right? Suppose that after twenty years more of continued and increasing monopolies on the one hand, and poverty on the other, the people should realize that, after all, the State is powerless to effect a remedy, or that its interference is the direct cause of these evils. How shall we undo the wrong that has been done? How shall we make amends to the unfortunate victims? How shall we justify the stupidity that failed to question the dogma? What will be the anathemas of the next generation, with whom forbearance will cease to be a virtue? Let me remind my hearers that neither constitutions nor supreme benches, but JUSTICE, as voiced by the human conscience, is the court of final appeal.

The idea of the coining of money and the issue of currency by the State being borrowed from the despotism from which the people were emancipating themselves when they drove out the British tyrant; and since it is irreconcilable with the Declaration of Independence, which proclaims the right to freedom of exchange (liberty and the pursuit of happiness), how dare congress deny that right by restrictive and arbitrary legislation? If we are not to take the chances of this idea being wrong and of perpetuating the present evils in case they are caused by State interference, then we must fully investigate this question. If the business world, as a rule, has given this subject no attention now, it had given it less when the constitution was framed; hence, no one was prepared to question the wisdom of the clause in that document that relates to money; and, "as the business world as a rule has given it no attention," and "bankers are no exception to the rule." how do they know that the State should exercise this power? Mr. Easterly says: "I have talked on this subject with governors, judges, lawyers, members of congress, bankers, and business men, and almost universally, after a little conversation, hear them say, 'This is a subject to which I have not given much attention.'" How can men who have not given a subject much attention "legislate wisely" upon that subject? How does Mr. Easterly know that it is proper or that it is best for the State to control the currency?

On page 14 of his "Review" he says: "It is entirely safe to say that we have now the best currency in the world." This does not constitute an argument in favor of its continuance in view of the ignorance which he confesses is almost universal. To be the best that exists, and to be the best that can be devised, are two very different things. It can be the best that exists, and yet be very defective. Is this all the evidence he can produce to justify State control of money? How does he know that the operations of supply and demand, if allowed full scope,

would not be an improvement on paternalism? The present system gives the banks control of the volume of money, "which," he says, "I admit should be obviated," but for which he gives no remedy. Before the present system came into operation, the cormorant corporation was unknown. On what, then, doth it feed that it hath grown so great, if not on the effects produced by the control of the volume of money?

In what does the best system of money consist? In the fact that its currency does not suffer discount in different parts of the country, and that it does not become worthless by failure of the bank that issued it? What other advantage has the present system? On the other hand, is not the question of the rate of interest as well as of the volume of currency vital in the consideration of a money system, and does not the present system give the rate of interest as well as the volume of currency to the control of the monopoly? Has it prevented banks from failing? May not monopoly and failure be associated in the relation of cause and effect? Of what consequence is it whether you lose a hundred or a thousand dollars by a depreciation in the purchasing power of the paper money you hold, or whether you deposit that much in the bottomless pit of a broken bank? If the State is a potent remedy, why do banks fail in spite of its supervision? The fact is that, whenever the State stops one leak, it causes two. If security to the holder of paper money and uniformity in its purchasing power are attained at the expense of low rates of interest and a sufficient quantity of the circulating medium, can we be said to have solved the problem of money and established the best system? Is there no other way of securing uniformity in the purchasing power of money than by State regulation? Can the question of security and moral obligation be settled by law? Does the State know how much money is needed? If so, how did it find it out? If it does not know, how does it presume to limit it? All these questions must be definitely settled before we can

boast of having solved the problem and established the best system.

And is the intelligence that can erect these grand structures in our cities; that can annihilate time and distance by the telegraph and the telephone; penetrate yonder space and determine the size and composition of celestial bodies, their distance and their movements; that can photograph organisms that cannot be felt, or seen by the naked eye; aye, that can construct engines of war so destructive that they are afraid to use them,—is an intelligence, I say, so subtle, and a genius so profound, not capable of solving this problem, be it ever so complex? Let us boldly assume the task of contributing our best thought and earnest co-operation in so important a reform.

Mr. George Easterly believes we have now the best system of currency in the world. Mr. Britton A. Hill asserts that we must have an irredeemable money,—"absolute money,"—a money that shall depend for its acceptability upon the fiat of the State. Neither of these gentlemen seem to favor impartial investigation. On the contrary, they assert dogmatically, and then, like the attorney who has a bad case, construct an argument to justify their position. If paper money is amply secured, it needs no fiat; it will circulate on its merits. To force people to take currency that is not secured is as much a despotism as a forced loan, and is unjustifiable on any grounds whatever. In scientific analysis nothing is taken for granted. If we are to form an opinion as to any institution, we certainly must first know what is the method and object of such institution. Have we observed this course in choosing our money system?

It may be stated in general terms that the object of a money system is to furnish money; but here we are confronted with the question, "what is money? how is it defined?" We must also know what kind of money it proposes to furnish; of what material it is to be made; how it is to be issued; how it secures

those who take it in exchange for commodities, and what is to be the cost to those who borrow it. First, then, as to the definition of money. The Encyclopedia Britannica gives Francis A. Walker's definition of money as follows: "That which passes freely from hand to hand throughout the community in final discharge of debt, and full payment for commodities, being accepted without reference to the character or credit of the person who offers it, and without the intention of the person who receives it to consume it or enjoy it or apply it to any other use than in turn to render it to others in discharge of debt or payment for commodities." This definition is applicable to coin as well as currency, and is acceptable so far as it goes, but it refers only to the office of money,—its function in facilitating the exchange of the products of labor or commodities.

In order to do this, money must have some qualities that are recognizable. For instance, coin may pass freely from hand to hand and purchase as much for a beggar as for an aristocrat, and so may currency, but the nature of coin is different from that of currency. It has market value at least to the extent of the quantity of metal it contains, while currency contains no market value whatever; hence its acceptability in exchange for commodities must be on other grounds than those on which coin is accepted.

Coin money is made of metal, which is a product of labor, and therefore has a market value. It is true, the natural limit to the metal and the fact that it is made a legal tender gives it an increased value artificially, but it is nevertheless market value. This is one quality. The fact that the stamp on it enables one to know how much of this market value it contains is another quality. The recognizable qualities of coin money then are, that it contains market or exchangeable value and that we are able to realize how much of this market value it contains by means of the stamp impressed upon it.

Paper money has no market value, or, to state it more correctly, the market value of the material contained in paper money is too inappreciable to be considered; but it is, or should be, a representative of market value, as is the case when it is issued in place of an equal amount of coin pledged to redeem it. I therefore define the nature of coin money to be wealth, and that of paper money to be a representative of wealth when wealth is pledged to secure those who take it. State paper money which rests solely on the promise to redeem in taxes may, I think, properly be defined as State scrip, but when, in addition to this promise, it is made a legal tender for private debts, fiat money would be a more proper definition.

Having arrived at a conclusion as to the correct definition of money, in regard to its nature as well as its office, I will now proceed with the main question,—in what does the best system of money consist?

The best system of money is the one that will furnish money made of the most suitable material; that will provide a sufficient quantity; that will afford the greatest security to those who take it; that will maintain the most unvarying uniformity in its purchasing power; that will furnish it at a just rate of interest and with the least partiality. It does not seem necessary to discuss these points, for there will hardly be any one who will dispute them. A money system that will come up to all these requirements would certainly be a most perfect one; but as to the questions, what is the most suitable material, how much is a sufficient quantity, what constitutes security, purchasing power, a just rate of interest, and impartiality in a money system, we must fully determine before we can judge of the merits of the present system or suggest a better, which is the special object of this essay.

First, then, as to the question of material. There are very few materials that are suitable for money, and, if we confine it to such products as are limited by nature, we thereby fix the limit to the amount of

such product, and this, as we shall see when we come to the question of volume, is an objection. Paper, as already stated, is the material which, of all others, contains the smallest quantity of market value. It is the most convenient to carry. Its quantity is without limit. It offers greater protection against counterfeiting than any other material. It costs less than any other material to put it in the shape of money, and the wear and tear to paper money is far less in cost than that which results to coin. We have, then, in paper the best material for money that we know of. Of the items that remain to be considered, it will be found upon reflection that volume, security, and purchasing power, are so intimately related that they must necessarily be considered collectively. To determine volume we must consider security, which is also the basis of its purchasing power. This, I think, can be readily demonstrated. What is it that makes a man's promissory note acceptable to those who sell on credit or have money to lone? Is it not the quantity of security he can furnish? Does the number of promissory notes that have already been issued in the same or other localities in itself have anything to do with the individual responsibility of each? Would not all the goods that are for sale on credit and all the money to loan be immediately disposed of if the price or rate of interest were agreed upon, without any halt in the proceedings on account of the large number of notes, and would not the only question be the same in each case,—namely, *ample security*? Now, if ample security makes the individual's promissory note good, why will not ample security make paper money good? If a certain amount of collateral, differing in quantity as it differs in kind, is good security for one paper dollar for a longer or shorter period, why would not a thousand or a million times that security be a good basis for the issue of a thousand or a million dollars in currency? Indeed, if this relative proportion of security to paper money be observed, why should there be any limit to

the issue of currency? If some citizens can get money issued on collateral, why may not all citizens have the same advantage? If paper manufacturers and printers can furnish money for a certain class of security-holders, why can they not furnish money for all security-holders? If they can why is it prohibited? If they cannot, why can they not? Does the fact that some citizens borrow gold and silver certificates of other citizens on good security in any way diminish the risk of the holder of this kind of State money? Would the issue, direct to the borrower of additional similar currency, on the same security that these citizens are willing to loan their gold certificates on, in any way increase the risk to the holders of these certificates? Can this security be good collateral to loan on, and yet be poor collateral to issue on? Does the security furnished the national bank by its patrons have anything to do with securing the holders of its notes?

Let us summarize: we are considering the volume of paper money in relation to its purchasing power, and the question is: would its purchasing power be affected by the volume issued regardless of the *security that is pledged to redeem it*, or would ample security maintain its purchasing power regardless of the *volume issued?*

Let me consider for a moment what is meant by redemption, in order that the question of volume, security, and purchasing power may be fully understood. The term redemption, as it is generally applied, means the exchange of currency for coin. Specie basis means that provision is made for the exchange of currency for coin *on demand*. This is what it is said to be, but what is it in reality? In reality not more than one in five can obtain such a result; partly because there never is as much coin as there is currency, and partly because of the obstacles intentionally put in the way of accomplishing it. Nevertheless it is solemnly asserted that, unless we have specie basis, the purchasing power of paper money

will not remain uniform. No wonder people do not understand the money question. It certainly takes a peculiar kind of intellect to comprehend that the stability of a currency depends upon false pretense!

But redemption of paper money, correctly speaking, means to retire it from circulation by rendering an equivalent for it; and can this not be done with any other product just as well as with gold and silver, if the money system is adapted to that end? The question to determine at this particular point of the discussion is whether redemption on demand is essential. We have seen that in practice it is a delusion, and I repeat that it is impossible; but it is well to go a step farther and inquire if it is at all necessary! Suppose that, instead of redeeming on demand, we redeem periodically. Here the question of security again comes to the surface. If, as I have already suggested, that collateral which is safe to loan money on for a certain period of time is safe to issue money on for the same length of time, and we devise a system that shall issue money direct to all borrowers who can pledge such collateral, we shall have periodical redemption instead of, possibly, no redemption at all; but which goes by the name of "redemption on demand." Gold certificates are receipts for so much gold that has been delivered to the State for "safe keeping." Would not currency issued on other products of labor which have been delivered for safe keeping, or pledged by mortgage to be redeemed at a specified time not to exceed one year, be practically receipts for other products, just as the gold certificate is a receipt for gold? And if the amount of paper money issued on any particular product did not exceed the amount that money-lenders would be willing to loan on such product in gold certificates, would not such currency be as good a circulating medium as are the gold certificates? The answer that a large number of people are likely to make to this reasoning is that gold does not fluctuate in market value as much as other products do. But such an answer

shows a disposition, on the part of the individual who makes it, to avoid the trouble of thinking. Laziness is one of the contending forces of nature, and it seeks the line of least resistance. It is easier to raise an objection without thinking than it is to reflect long enough to know whether the objection is well taken; and if we wish to guard against being in the wrong, we should beware of its tendency. It is supposed that gold does not fluctuate in market value as much as other products; but even if this were true, it would only be an additional argument why currency should be issued on other products as well as gold. If the artificial advantage established by the legal tender act is withdrawn from gold, and all other products (always excepting those that are too perishable) may be made use of as well as gold as a basis for the issue of currency, there can be no fluctuation in market values, except such as is caused by the *uncontrolled* supply and the *natural* demand of each product; and with sufficient margin over the amount of paper money issued to allow for possible shrinkage in value, the fluctuations of any one product can have no effect whatever on either the purchasing power of such currency or the market value of other products, because the manipulation of market values by speculators will be impossible.

We have now considered the question of the volume of currency in relation to its purchasing power and security to those who take it. Its purchasing power is determined by the means of redemption: the borrower is compelled to get the amount he borrowed from the institution that issued it, from those who now hold it. He can do so only by selling something he has that they want, or by accepting it in payment of debt. He cannot depreciate this paper money and get it back on better terms, for that would be the same thing as selling his commodity for more than its market value, and this he is not able to do, if free trade prevails, because of competition; others will undersell him. Moreover, there is no more anx-

iety about this currency in the minds of those who hold it than there is with money-lenders about the mortgages they hold on good real estate on which they have loaned money only to the extent of one-third of its market value; hence, there will be no effort to get rid of this currency, except in the ordinary course of trade. We are, therefore, justified in concluding,—that in the issue of currency, on ample security actually pledged to redeem at a definite period, a provision is made whereby it can be redeemed by *compelling the borrower* to return an equivalent for it at the expiration of that period. Therefore, by such a system, the purchasing power of currency *can be maintained regardless of the volume issued.*

We now come to the question of interest. What is a just rate of interest? In order to answer this question intelligently, we must know something of the cost of issuing currency. We must also have a clear and a correct idea of the nature of the transaction that takes place when currency is issued directly to the borrower who pledges collateral. We will therefore first make some inquiries in this direction. There is the paper and the printing on the paper that is to be used as money; compensation for services to the clerks, officers, and directors of the institution; the rent, fuel, stationery, etc.; and the expense attendant upon taking care of the security. Colonel Greene, in his pamphlet called "Mutual Banking," gives it as his opinion that one-half of one per cent. per annum would cover all these items in the system he proposed. Of course it would depend on the amount issued. An institution that issued one hundred millions of dollars could cover its expenses with one-half of one per cent. better than an institution that issued only one million. In the former it would amount to five hundred thousand, in the latter it would be only five thousand dollars. According to information received from the comptroller's department at Washington, it has cost about one-fifth of one per cent. to make the paper

money furnished the national banks for the last ten years.

This fact gives some idea of how far a half million of dollars would go toward paying the expenses of a bank of issue. From the information I have gathered and the calculations I have made, I am willing to risk the statement that a bank that issued fifty millions of dollars could pay all its expenses with less than one-half of one per cent. per annum; and when such institutions as Colonel Greene proposed become the source of currency instead of the State, they certainly will issue as much as that in all large cities, and in some many times that much. But the question under consideration not only involves the item of cost of issuing this currency, but also as to whether the borrower should be called upon to pay more than cost.

Let us analyze the transaction, to see what it is that actually takes place when an individual borrows paper money on good security of which he is the owner. Paper money we have defined to be a representative of wealth. Whose wealth does it represent? It represents the *wealth which has been pledged* to secure those who may take it until it is wanted again by the owner of the wealth in order that he may get his property (wealth) released from pledge by returning it to the institution that issued it. We may define the transaction, then, by saying that the borrower *makes use of his credit;* for he assumes an obligation and pledges his property as a guarantee that he will fulfill that obligation. He obtains printed pieces of paper (which might, not inappropriately, also be called certificates of credit) which are given him in exchange for his promise to pay back the same amount at a definite period, which promise he guarantees he will fulfill by pledging collateral in the form of some product, deposited, if movable, or mortgaged if immovable. Now, if the borrower pays the cost of the transaction, he in no way makes use of that which belongs to another; and as no one is entitled to compensa-

tion for that which he does not furnish, may we not conclude that a just rate of interest would be the actual cost of issuing paper money?

Finally, we come to the question of impartiality. What do I mean by the issue of paper money with the least partiality? A money system that proposed to issue currency on any product except gold and silver would certainly be regarded as very partial by the bullionists; but why is not the system equally partial which issues currency only on gold and silver? Obviously, impartiality in the issue of paper money means that any product of labor may be a basis for the issue of currency, which would not, from the nature of the product itself, involve a risk to the holder of the currency issued on such product.

Let us now review the various conclusions we have arrived at.

We have concluded that the definition of paper money is, a representative of wealth as regards its nature. That the best system of money is the one that will furnish money made of the most suitable material, that material being paper; that will provide a sufficient quantity, a sufficient quantity being such an amount as will afford a representative of wealth to all those who can pledge wealth as collateral; that will afford the greatest security, such security being only attainable by pledging actual wealth in sufficient quantity, deposited if movable, mortgaged if immovable; that will maintain the most unvarying uniformity in its purchasing power, the paper money that is best secured varying the least in its purchasing power; that will furnish it at a just rate of interest, a just rate of interest being cost; that will issue it with the least partiality, so that, to obtain it, one must pledge collateral in the form of wealth, not through favoritism or influence.

Now compare these conclusions with the present system. The present system, like all its predecessors, fails to provide the means whereby property owners may use their property for purposes of credit without

submitting to the tax called interest, imposed by the monied class. A single illustration will demonstrate the truth of this assertion. An individual who has property, but no money, wishes to buy some commodities. If he buys them on credit, he has to pay more than if he buys for cash. If he borrows money giving a mortgage on his property, in order to buy for cash, he is confronted with interest. It is either interest on the merchandise or it is interest on the money; and this interest is enforced by prohibiting the issue of the currency directly on the property mortgaged to secure the money-lender instead of the money-holder.

And now let me point out to you the blunder at the door of which can be laid all the error that has confused the mind of every thinker, puzzled the brain of every financier, and defeated the efforts of every economist to solve the financial problem. It is the failure to recognize the difference between coin and currency. I have shown you that coin is wealth, and currency is but the representative of wealth. When the borrower borrows coin, some one is deprived for the time of that much wealth, and he is entitled to whatever compensation free competition will allow him when he consents to part with his property; but when the borrower obtains currency issued directly on his wealth, he is depriving no one of the use of his property. Therefore, no one is entitled to compensation. The human conscience was right, after all, in its repugnance to interest, for now we see its abolition realizable, not through philanthrophy, but through the effect of a principle; and this simple method of making use of one's credit, or obtaining money without depriving one of his wealth, changes the whole philosophy of political economy through the universal application of that element so obnoxious to our State Socialistic friends,—namely, *competition!*

Before summing up what has been accomplished, at least in theory, by a research deeper than most writers have made into this question; and lest I

should be assailed for not providing, or for having overlooked, the supposed necessity for a "measure of value" or "standard of value," I will in a few words give it a passing notice.

If we never had used money and had no conception of what was a common denominator or unit of value, but which is improperly called "measure of value" and "standard of value," such as the dollar in this country, the pound sterling in England, or the franc in France, etc.; if, I say, we had no generally accepted term by which we could convey the idea of a definite quantity of any commodity, it might be sometime before we could all agree and understand how much of any commodity was meant by a dollar's worth, if we should adopt that term, or how much was meant when we should mention whatever term was proposed or agreed upon. We might possibly, under such circumstances, even be compelled to coin pieces of gold and silver, although I am so rash as to think that perhaps some other way might be devised that would involve less labor. But such is not the case. The price of every commodity in this country that can be obtained with money is expressed in, and every individual who has anything to exchange for money uses, the term dollar and its subdivisions, and there is no misunderstanding or complaint as to what is meant. Yet, not withstanding this, and the fact that for a period of about seventeen years in this country, and at other times for longer or shorter periods, and in England for a period of twenty-five years, and in the same and other countries for periods of many years at a time, in no place could coin be obtained on demand in exchange for currency at its face value, yet, I say, not withstanding these facts, it is solemnly asserted by the bullionists, as I previously stated, and also by many of the learned professors, that a stable currency cannot be had unless it is based on gold, or at least on gold and silver. What more need I say than what has been said as to the real object in limiting the circulating medium?

In summing up my criticism of the National Bank System, I ask your earnest consideration to the following points.

I commenced this essay by calling your attention to the extent of the ignorance that prevails in reference to the nature of money by quoting Mr. Easterly's statement of his experience, which corroborates my own for the last fifteen years, during which time I have given this subject constant, earnest, and careful study. The general idea is entertained that, since the ablest men in the world have been occupied with this subject, the present system must be the best that could be devised, and, therefore, to devote one's self to its study is a waste of time. This position is further strengthened by the very absurdity of prevailing notions; being so enshrouded in mystery, impossible of rational explanation, and irreconcilable with common sense, failure to comprehend is attributed to the profoundness of the subject rather than to its errors and inconsistencies. Thus we have been deprived of an intelligent popular verdict on this interesting and important subject. The very fact that there has never been any popular discussion of the idea of free trade in money,—which means the entire abolition of all State control,—or of the application of the mutual feature to the issue of paper money, is proof of how far we may yet be from a solution in the adoption of paternalism.

The inconsistency of our political constitution with the philosophy of liberty entertained by the founders of this republic is apparent in contrasting that document with the Declaration of Independence. The one declares the inalienable right to liberty and the pursuit of happiness; the other ignores that right by establishing a monied class that controls industry and commerce and denies the right of private property. How can such inconsistency be explained except on the ground of the ignorance that prevailed in reference to the necessity for State interference? It is a monarchical institution, and has no part or lot

with a free people. The motive that prompts the thesis of State dictation is clearly *special interests*. The motive that prompts the antithesis is the interests of all. Whichever proves to be the best system of money, the people will voluntarily accept. The best and safest money is always competent to drive out inferior money, if there is enough of it.

I have shown you a glimpse of a system far superior to the present one; yet, lest it should be defective, I want *liberty*, that others may establish a better. This system would have been tried thirty years ago; but the monied power, ever alert to its own interests, ever able to command the best talent and the weightiest influence in its behalf, knew well how to secure for itself, through legislation, that which free, open, and fair competition will deprive it of, and succeeded in extending for itself a few more decades of supremacy. We profess to despise imperialism, yet we retain its essence,—the very diet on which it fattens and without which it must die a natural death.

When the State ceases to protect the banks in the control of the medium of exchange by prohibiting its issue except on certain commodities and by certain parties, and by "fixing" the value of those commodities by making them a legal tender for a definite amount, then the paper medium of exchange can be issued, as I have shown, directly to borrowers at the cost of the transaction through the mutual bank, just as you get fire and life insurance at cost from the mutual insurance company; then money lending as a speculation will cease, and with it will also cease the objectionable features of boards of trade and stock exchanges. Without you limit currency by an arbitrary money system, speculation is impossible! The right to use one's property for purposes of credit is as unquestionable as the right to sell it. The present system denies that right by compelling you to obtain the consent of a certain class of citizens who are provided by the State with certain pieces of paper which you are prohibited from obtaining directly

through association at an average of one-tenth the cost.

With the greater part of the wealth in the country convertible into available capital for productive enterprise by the issue of paper money thereon, all monopolies would have to reduce profits and increase wages, because of the enormous amount of capital that would enter into competition with them, until at last the capitalist would be compelled to co-operate with labor for mutual good,—the natural result that must follow a surplus of capital instead of a surplus of labor, as now.

The prosperity that would result from the employment of all the people now idle, in addition to those already employed, at constantly increasing wages would terminate in each getting the exact proportion of what each produced. Poverty would thus be gradually eliminated and crime would cease, panics become unknown, and prisons and poorhouses no longer disgrace our civilization.

CAL.

CALIFORNIA

FRUITS AND MARKETS

INV. 1898.

IS THERE DANGER OF OVERPRODUCTION?

AN ADDRESS BEFORE THE STATE BOARD OF TRADE,

APRIL 11, 1893,

BY

MR. A. T. HATCH,

(A Californian Fruit Grower.)

ISSUED BY THE STATE BOARD OF TRADE,
603 Market St., San Francisco.

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CALIFORNIA SECTION

CALIFORNIA'S PROGRESS IN FRUIT CULTURE.

At the last meeting of the State Board of Trade Mr. A. T. Hatch, the well-known fruit-grower, presented to the members of the Board, in an informal manner, the results of his observations and long experience in the culture, preparation and distribution of various kinds of California fruit products. Mr. Hatch appeared before the Board by special invitation, but expressly declined to make a set address on the plea that he was not an adept at speech-making, and that he did not propose to learn at this time. He expressed his readiness, however, to answer, as well as he could, specific inquiries by members of the Board, and the result was a most interesting and profitable discussion, of which a full report is here appended.

The first question propounded was by Mr. W. H. Mills, who desired to know: "Is the fruit industry making substantial progress in California?" Mr. Hatch replied: "There is but one reply to that question; the evidences are before you everwhere. New orchards are being planted everywhere throughout the State and there is decided improvement in the culture and care of green fruit, in canning and in drying, and in preparation for the market. Our markets are wldening, our facilities for reaching them are better, and freight charges have been materially reduced. The output is being vastly increased, and, as a consequence, the cry of overproduction is being raised by the same men who, 15 years ago, were tooting the same horn. The past season, as a whole, has been profitable. Last year the market was rather poor, owing to unusual conditions, and the year before we received a great deal more for our products than we should have. Our methods of placing fruit on the market in advanced stages of ripeness have improved its welcome among consumers. The general testimony of Eastern people is that

our fruit is good, very good. Its quality has been improved by increasing its ripeness before shipment. A few years ago fruit placed upon the market was only from one-half to two-thirds developed, but new peaches, for instance, may be well developed and colored on the tree and then shipped East, and they will arrive in better condition than if two-thirds matured before shipment. Expeditious service and proper refrigeration have been of vast value in accomplishing these results. It may be stated as a well-attested fact that fruits, ripe, hard, firm, and with a sufficient degree of sugar in them, can be carried farther and their qualities better retained than when packed green. Taken altogether, I am satisfied with the general condition of the fruit industry and am greatly encouraged as to its future."

Mr. Mills: "What effect will the World's Fair have upon the demand for California fruits?"

Mr. Hatch: "Inquiry will be greatly stimulated, no doubt, but I would not advise poultry-raisers to ship all their turkeys to San Francisco at Christmas time; so it must not be thought that Chicago is the only place and the World's Fair the only time for sale of our fruits."

Mr. Cole, of Fresno: "What is your opinion of the relative value of irrigated and non-irrigated fruits?"

Mr. Hatch: "I do not live in a district where irrigation is necessary, but my own opinion is that nature is the best irrigator. Here is an opinion, but it may be wrong, that fruits from irrigated districts do not seem to keep as well as non-irrigated. I look upon irrigation as an aid to natural conditions, and my method would be, if I were to use irrigation at all, to flood my lands in winter with pure water and at a time when rains are naturally expected, and I would stop flooding in the spring when the rains naturally cease; then I would begin with my cultivators."

Mr. McAfee: "Are you prepared to give a reason why there may not be overproduction of fruit? Again, can California supply all fruits required in the markets that can be reached and developed?"

Mr. Hatch: "I think it can. It will be a long time before the limit of production in California is reached. Places by natural conditions well adapted to the culture of

fruits will be used first. Other regions which can be developed will eventually come into full bearing, but their adaptability and resources must be learned carefully and it will take some time to do it."

Question: "But do you think we will get markets for all the fruits that we will raise?"

Mr. Hatch: "I think that our markets and facilities for reaching the market will increase as our production increases. We can afford to put fruits in England, for instance, at last year's highest price, and make a fair profit. The cholera scare, however, then prevented a fair test. The English people are pleased with some varieties of our fruit, and prices so far realized have been good. But charges for distribution of our fruits are now too great in every way. Refrigeration, transportation by land and sea, and commission charges for handling and sale, are too high.

"I might call attention to one feature of our shipments that is bad. It costs the same to transport a 12-ton car of fruit to New York as 10 tons, and we therefore stock a car with the maximum. Now, the cars we shipped to England were 10 tons, and the fruit actually arrived in better condition than that shipped to New York. The entire cost of shipment to England was $1200 a car. I believe that transportation companies will soon give us a rate by which it will not cost us over $800 a car, or $200 more per car than we are now paying to New York. It is obvious that with these lower rates the market in England will be widened."

Question: "Do you think there is a possibility of producing too much good fruit?"

Mr. Hatch: "No, not now, nor at any time. I think we will always get good prices for all first-class fruit put on the market in good shape. There is profit in good fruit, no matter what the competition. There was once a time in the East—in Ohio—when thousands of acres of fruit fell to the ground and perished. That was when I was a boy. There is a difference now. The orchard acreage in that State has vastly increased and none of the product is wasted. The reason is that they now have facilities for reaching the market."

Question: "When the fruit product of California was one-fourth what it is now, was the market better or worse?"

Answer: "It was not so good. As production has increased in the past, so has the market improved, and the analogy is that it will in the future. For my own part I am selfish in wanting greater and more general cultivation of fruit, more people in the business; I want our fruit industry to be so important that all people will naturally look to California when they want to buy. I wan't competition in growing and handling, and improved methods in all lines, because I know that I, myself, as a fruit producer, will have the benefit of all this knowledge and improvement of conditions that surround the business."

Question: "Is distribution of fruit easier and better than it was a few years ago?"

Mr. Hatch: "Yes, five or six years ago I was in New York City. I saw the leading fruit dealers and asked each of them how much California fruit could be disposed of by them in one week. No one said over a carload. One dealer said he did not want to handle any. Now New York sometimes consumes from 15 to 20 carloads a day of our fruit. Last year we forwarded there 600 carloads."

Question: "Do you find that the different counties of California tend to specialization in the various lines of fruit?"

Mr. Hatch: "No, not so much as formerly. Santa Clara valley raises more prunes than any other part of the State, but it is not true that Santa Clara is better adapted to culture of that fruit than any other section. Orange culture first assumed large dimensions in southern California, but it is not necessary to go there to raise oranges profitably. Elwood Cooper first made a success of olives in Santa Barbara, but other sections are as well adapted to olives as that county. It was once supposed that better almonds could be raised in Suisun valley than elsewhere, but I have secured more valuable results in almond culture outside of Suisun—say on the Feather river in Butte county. The inclination has been for one locality to start in on certain lines and for others to follow."

Question: "Do you mean to say that you do not have to go to Fresno to get the best results from raisins?"

Answer: "Not necessarily, but you must cultivate raisins where best conditions exist; they cannot be advan-

tageously produced in Napa county, for instance, because of too much fog."

Question: "What about the over-production in raisins last year?"

Answer: "Good raisins brought a good price last year, the same as any other. If it is a good article a market will be found."

Question: "What about the use of fruit now, as compared with old times?"

Answer: "People of the East are reaching out for other fruits besides their own; they cannot raise the varieties they once did. For instance, there are practically no cherries in the East without disease. They are afflicted and destroyed by pests."

Question: "Is the aridity of the California climate favorable or unfavorable to the development of insect (pest) life?"

Mr. Hatch: "I am bound to say that in some places conditions are very favorable. In hot sections the scale thrives very well. California is as completely menaced by insects as the East. But I believe that we handle our insects better and, in fact, that we do everything else better in connection with fruit. It used to be that when we discovered pest-infected trees we dug them up and burned them, but our methods have so improved that now we do not need to worry about pests. We know how to handle them."

Gen. Chipman: "I cannot agree entirely with Mr. Hatch. I am persuaded that in the warm sections of the State the scale does not flourish so well as in the more humid sections. In some counties scale is disappearing."

Mr. Beach: "In Santa Clara the scale has almost disappeared. It is the impression of some persons that insects have a definite time for existence, and many pests have reached their limit."

Mr. Maslin: "In respect to our capacity to overcome the various pests, I will say that Prof. Comstock, one of the leading entomologists of the United States, in a lecture before the State Horticultural Society, stated that at one time he began the study of washes and other means for exterminating insect pests; but the California orchardists have so far outstripped him in practical results that he had refrained from further investigation. He further congratu-

lated the orchardists upon the intelligence they displayed in the study of the life habits of insects, and stated that the people of the State excelled all others in the enterprise and learning they exhibited in horticultural pursuits."

Mr. Mills: "I agree with Mr. Hatch that horticulture demands a high order of intelligence. It will be elevated almost into the domain of a learned profession. The Stanford University has a class of students pursuing, under a professor, the study of the theory and practice of horticulture. The State University has maintained, and still maintains, a department of horticulture. The opportunity offered in this State for the education of tillers of the soil surpasses that of any other State."

Mr. Hatch: "Our people take better care and use better judgment in everything pertaining to the fruit business than ever before. We are unquestionably further advanced in this respect than any other State in the Union."

Mr. Mills: "I am approached by a great many people who come here from the East for the purpose of going into the fruit business, and who have learned that our processes are totally different from those in vogue there. They want to know how to begin fruit culture, and they ask me if there is any compilation of printed experience that will be of benefit to them in starting and cultivating orchards. Do you know of any work that is a sufficient guide to these new-comers?"

A. "Yes, there is. Professor Wickson's 'California Fruits' is an excellent book for them and for all others. This, with the various reports of the State Board of Horticulture, giving verbatim proceedings of different fruit-growers' conventions, ought to provide sufficient instruction and information."

Q. "What do you think of a special school or college education, instructing students by a course of study as to when, where and how to plant, and designed to equip them fully for the fruit profession?"

A. "There is no doubt of its value. Fruit growing is going to become a science. It is necessory to begin at the bottom and learn. I do not want a foreman in my orchard who has had a great deal of experience elsewhere. He has too much to forget. The best experience I have had was with a man who knew nothing about the business, who knew he knew nothing and was willing to learn. He did learn."

CHAPTER II

ON

FIRE UNDERWRITING

Insurance

AS CONDUCTED

ON THE

PACIFIC COAST.

OCTOBER, 1867.

23,250 INV. 1898

CHAPTER II.

On Fire Underwriting on the Pacific Coast.

DEMORALIZATION RAMPANT.

RUIN TO OUR LOCAL COMPANIES INEVITABLE.

STAND FROM UNDER!

THE CRASH

When it comes, will be alike ruinous to Stock-Holders and Policy-Holders.

CHAPTER II.

ON FIRE UNDERWRITING ON THE PACIFIC COAST.

DEMORALIZATION RAMPANT.

RUIN TO OUR LOCAL COMPANIES INEVITABLE!

STAND FROM UNDER!

THE CRASH WHEN IT COMES WILL BE ALIKE RUINOUS TO STOCK-HOLDERS AND POLICY-HOLDERS

On the 15th day of December, 1866, the "San Francisco Board of Fire Underwriters" elected to suspend their tariff of rates, in order as it was hinted that the local companies might be permitted to *draw blood* from the two leading Connecticut companies represented on this coast—the Ætna and Phœnix—and at that time a pamphlet was issued, entitled "A Chapter on Fire Insurance, suggested by the disruption of the San Francisco Board of Fire Underwriters," setting forth the cause of the disruption, and results likely to ensue; and while our predictions at that date seemed in a manner wild and unfounded, results *have* proven them to have been too mildly drawn.

Ten months have elapsed since this demoralizing war of rates was inaugurated, for the purpose of permitting the officers of our local companies to squander the money of their stockholders in the practice of the science of phlebotomy; and in that short time they have proven themselves quacks in the profession, having drawn more blood from their own companies than from the arteries of the companies they feared and would crush. A boldness in reducing rates, bordering almost on madness, has swept away all the old landmarks set up by the ex-

perience of the past, and led to a most unprofitable scramble for business. The moderately honorable competition of latter days has passed away ; there is no fixed tariff of rates ; no fixed principles of business ; all are left to take counsel of their fears, and oftentimes the falsehoods of interested parties; step by step has the downward path been trodden, until only a few more steps in the same direction are wanting to enable the assured to receive a positive premium for taking policies, while one new-fledged local, which we will call the "Infant Giant," has, without capital or experience, managed to receive the credit of offering a premium for incendiarism, and largely increasing the number of fires in this city and State. The ridiculous and pitiable spectacle has been seen scores of times in our streets, of companies underbidding their own rates, and allowing an irresponsible party, whose interests are adverse to their own, to dictate rates and conditions of insurance, in violation of long settled and well established rules of business. Companies that have kept good the income of the previous year have nearly doubled their liabilities and their losses, and ruin to those dependent on this coast for business is inevitable ; agents throughout the interior becoming as demoralized as the companies they represent, have made war on the Hartford companies regardless of consequences ; and to show their authority over the officers, and disregard for legitimate rules, have made large drafts for losses on certain of our local companies, on the mere representation of claimants residing hundreds of miles distant from the agency; and these drafts have been promptly paid by the equally demoralized officers, giving, no doubt, as an excuse, that their damaged reputations could not stand a protest, and consoling themselves with the assurance that the money came out of stockholders' profits, rather than out of their salaries ; and it may be that the very agents who made the drafts were of the list of stockholders represented by these liberal officers.

Two of our *local* companies in the early stage of the war seeing ruin ahead retired from the business of fire underwriting, and saved money by the operation, and if all of our companies had liquidated, instead of permitting their officers to wage a war for glory, they would have made money, as will be seen by reference to the annexed comparative statement of the value of stocks in the market, and which can be accepted in the absence of more reliable data as the barometer that speaks of losses and gains, success and ruin. In fact by reference to a pamphlet isssued by the Pacific Insurance Co., when it was doing a legit-

imate and paying business, we find that the Directors of that Company accepted this test as reliable, and in the following terms:

"The tests of good companies are—their experience, their history as Companies, their course of business, the character of the men who compose them, the promptitude with which they meet their losses, their ability under any circumstances to pay every dollar of their obligations; *the value of the stock in the market, and its appreciation or loss since its commencement.*"

COMPARATIVE STOCK QUOTATIONS.

Companies.	November, 1866. Bid.	Asked.	October, 1867. Bid.	Asked.
Pacific	170	172	110	115
Union	124	155	75	90
Fireman's Fund	109	111	88	89
California Home	89	92	Gone into liquidation	
Occidental	--	98	--	80
National	74	75	65	67
Home Mutual	--	--	9	10
Builders'	--	--	10	50

DIVIDENDS.

For two quarters after the war of rates was commenced our *local* companies managed to squeeze out dividends: whether from profits, interest on investments, reserved fund, or capitals, the officers and Directors best know, and we leave it with them to satisfy their stockholders.

For the quarter ending Sept. 30th, the holders of stock in the Pacific, Fireman's Fund, Union and Occidental were informed that the companies would be compelled to pass their dividends, thus depriving stockholders of about $153,000, which they had expected, and $110,000 of which they could have relied on, had they kept out of insurance stocks and loaned their money on first-class collaterals. This action on the part of the Companies in withholding the earned interest as well as profits from the business, if any, gave rise to many inquiries disagreeable to the officers, and induced the Pacific to issue a circular containing the following singular resolutions:

"First. The condition of the fire insurance business on this coast, as conducted at the present time, insomuch that the current rates are far below those now charged in the east on similar hazards, and not adequate to the risks assumed, and that the

prevalent and growing irregularities contribute largely to increase the hazard against which we insure.

"Second. That this Company did, on the 20th of February last, transfer $250,000 from its surplus fund to increase the capital to $1,000,000 as at present; and that since such increase of capital, the unwise competition in business has prevented the accumulation of profits in the same proportion as formerly.

"Third. That this Company is seeking to extend its business still more with eastern and Atlantic States, as well as foreign ports, and in order the more fully to comply with their several laws, on the first of January next it is desirable that the surplus over the increased capital shall at that time be as large as possible.

"Fourth. The earned profits for the quarter ending 3d of September, in compliance with the laws of this State, were $74,784 04, and the usual dividend of two per cent. per month could have been made; but for the reason above named, it was considered wise to carry all to the surplus fund, and at present make no dividend."

These resolutions, smooth and oily as they may appear, fall as far short of explaining the matter of dividends to the satisfaction of stockholders, as do Mr. Mooney's "letters to the people," giving *premiums* and *losses*, furnish a clear statement of profit and loss. In the first place if, as stated, "rates have not been adequate to the risks," how did the Pacific Company manage to "earn a profit" of $74,784 04 during the quarter, and having *earned* it why is the dividend withheld; the ordinary 6 per cent. dividend paid, the company would have $14,784 04 to add to the reserved fund, which would seem a very healthy addition in prosperous times. As to the increase of capital by a transfer of $250,000 from surplus fund, the officers and Directors urged the stockholders to vote in favor of such action; and while the increase was had without direct cost to them, they have not been benefited in pocket sufficient to warrant them in surrendering their dividends, as the capital stock of $1,000,000 will not sell for as much to-day as the stock representing the capital of $750,000 would have produced the day before the transfer was made; and too, it is self-evident it would have been much more convenient, and less burthensome on the company's patrons to have paid regular quarterly dividends on the original capital, the difference being $15,000, which has to be made up from some other source than interest account every quarter; so that we opine "unwise action" on

the part of the officers, in aiming to overshadow their rivals with an overgrown capital,—rather than "unwise competition," in itself bad enough,—is the trouble in this instance.

The extension of territory is also foreign to the "dividend text;" what effect should this action on the part of the Company have on *dividends already earned?* unless it may be that resolution "three" should have read: "*Forced dividends the past two quarters from income, unwisely called profit, having made serious inroads on the reinsurance fund of this Company, and having increased our chance of making heavy losses by opening agencies in the Atlantic and Eastern States, and in foreign ports; and having to make a sworn statement to the State of New York on the 1st day of January, which statement must show a proper re-insurance fund over capital and liabilities, in order to enable us to continue business in that State; and not having the necessary surplus at this time, the Directors deem it necessary to withhold from their stockholders both interest and profits until after Superintendent Barnes has had time to figure on the standing of the Company.*" And as stockholders in a *local* company, organized to do a *local* business, and secure to the capitalists of this city the huge profits that have heretofore been made by the Eastern and foreign companies in this *most profitable* field, it seems but justice that these dividends should be paid, so long as the officers can do so without laying themselves liable to the laws under which the company organized. In extending its field of operations, the Pacific is pursuing a course it has condemned in others; and if in order to gratify the officers in this spread for glory, the stockholders are to surrender their dividends, and increase their liabilities under the "personal liability" clause, would it be anything more than proper that the little army of officers and attaches in that office, under exorbitant pay, varying from $2,000 to $10,000 per annum! be asked to show their faith in the future, by contributing a per centage of their salaries toward the re-insurance fund required? "What's good for the goose is good for the gander," and if stockholders having little to say in the management of the Company have to contribute their profits, the officers and attaches who run the machine should certainly lend a hand; make them equally interested in the profits and losses, and it will not take long for stockholders to discover they have been the victims of misplaced confidence, as this "rule or ruin style" would soon cease when officers discovered they could no longer throw away money of others without affecting their own pockets. It has been claimed that the President or a prominent

Director tied on the front of a locomotive would insure safety to passengers in the train, and on the same basis *we* claim that to interest the officers and attaches in the profit or loss of the companies, would insure an advance in rates, more conservative action, and security to the stockholders from loss through recklessness.

FACTS.

Excuses, figures and explanations furnished stockholders by officers to quiet them are all very fine; but there is no cloaking the fact that our *local* companies rushed into the "war of rates" with eyes shut, and without counting the cost, and find themselves at this stage of the game in very bad shape. It was all very fine to declare war against companies that, it was claimed, were too rich and peaceable to fight; but results prove that their wealth, business tact and strength have thus far carried them through without an effort; and though ten months have elapsed, we have yet to learn that the receipts either of the Ætna or Phœnix Companies have fallen off, their stocks declined, or dividends been stopped in consequence of the raid made on them on this coast; while the companies that would have drawn their "last drop of blood," are themselves wanting in the *crimson fluid.*

ADVICE.

At best our *local* companies have too large capitals for the territory they occupy, and as it is dangerous to spread their borders until the "personal liability" clause is amended, it would seem desirable that they should first return to the *tariff and rules* which they tabled in December, and then reduce the capital of the four leading companies to $500,000 each, restricting operations to a fire insurance business, as it is both fatal to the true interests of stockholders, and unjust to patrons to combine fire and marine branches in one office, as the numerous failures of this class of companies during the past few years clearly proves. The premiums of marine customers paid to companies doing a joint fire and marine business, are likely to be swept away by a serious conflagration on land, while a series of marine disasters are equally as liable to absorb the premiums paid for protection against fire. Banking and insurance combined would be just as legitimate; and we ask *what confidence could depositors place in a banking institution holding deposits subject at any moment to be swept away by losses under insurance policies?* It does not follow that a smart

banker will make a successful underwriter, or that an underwriter understanding fire insurance can run the marine department with success; but on the other hand, we have only to refer to results in our *local* offices to prove that fire losses have swept away marine profits in the past, and it may be, that in the future should fire business become profitable, that marine disasters will return the compliment. Four well managed Fire Insurance Companies, with a capital of $500,000 each, should meet with success as *local* institutions if prudently conducted; while the remaining and weaker ones might be consolidated into a respectable marine company, with a similar capital, giving us four fire and three marine companies, which would be sufficient to meet the demand for *local* protection. Some such action is necessary to make underwriting by *local* companies safe and profitable, as at present they are so large and numerous, that *immense*, *compact*, and in many instances, very questionable risks are taken, by officers knowing that their skill as underwriters is measured by the "volume of premiums secured," and the "size of dividends declared," the stockholders looking more to present profits than future successes. Before us is a card of the Fireman's, offering to write $50,000 on single risks; and without coming in conflict with the laws of this State, the Pacific and National can, and it is presumed do carry $100,000 each, and the Union $75,000, in single risks—amounts that prudent Eastern companies with four times the assets, and nearly ten times the income of the largest, would not think of covering.—This style of reckless underwriting may produce large dividends for a season, but it is sure to result in disaster to our companies, as it has to the weaker New York companies operated on a similar basis.

IS SAN FRANCISCO A SAFE FIELD?

Thus far San Francisco has been a favored city, population considered it has probably been the most favored city in the Union during the past year; still the proportion of risks covered by our *local* companies is so alarmingly great—estimated at *two-thirds* of the whole—that in the few small fires we have had during the year, the majority of them originating in undesirable frame ranges, our companies paid fully *three-fourths* the entire insurance, which amounted to about half a million dollars; and the question arises, if this small loss has had the effect to upset dividends, what would become of our companies should a large fire occur? Chicago has made as heavy losses in ninety

days as were made here during the entire year; but the tables may turn, and then those who hold insurance stocks in our expensively managed, recklessly conducted, and clumsy companies, will appreciate our remarks and suggestions. This is in the main a dangerous *frame range* city, and a windy one; blocks in the frame portion are long and narrow; buildings back up quite closely to each other from the parallel streets, without alleys intervening, so that in the event of a sweeping fire there is no chance for our firemen to work to advantage. The supply of water at best not too plentiful, is very limited in the business portion of the city, and whenever fire gets its teeth firmly set in one of our heavy business blocks, with a stiff breeze blowing, it will be a miracle that will save us from a conflagration, only equalled by the one already recorded in the history of Portland, Maine, and which, in a short time destroyed $10,000,000 of property. In that conflagration, the *Maine locals*, carrying only about *one-tenth* of the insurance, were hopelessly ruined, paying only 20 to 30 cents on the dollar; and, as a consequence, it is not in the catalogue of possibilities that *our local* companies, carrying *two-thirds* the insurance of our citizens, could escape a much smaller conflagration without loss to their stockholders, and ruin to their policy-holders.

AVOID THE DANGER.

Let our officers, directors and stockholders look matters squarely in the face, and avoid ruin and disaster; reduce capitals as suggested; cut down risks in size and numbers, corresponding with the territory occupied, and with a view to meeting anticipated losses in sweeping conflagrations; open the State to free competition from sound Eastern and foreign companies, in order that the burthen of risk may be equalized, and losses great or small be met by the many with an ease, and in a style creditable to the underwriters and satisfactory to the assured.

MONOPOLY RUINOUS TO INSURERS AND ASSURED.

Monopoly in the business of fire underwriting is alike ruinous to insurers and assured. Profit cannot be measured by the amount of business done, but by the *way* in which it is done, the care made manifest in the selection of business, scattering of risks, and the adjustment of rates adequate to the hazards assumed. When Companies with a monopoly of the business in view have through the aid of the Legislature driven out

their competitors, they feel bound to take as large lines as are permitted by law, and crowd as compactly as the demand requires, in order to convince the insuring public they have not legislated against their interests, or limited them in the supply of indemnity required; and stockholders as well as policy holders are kept ignorant of the risks they run, until a serious conflagration proves to them in a most severe manner that they have been the dupes of monopolists. The merchants of St. Louis suffered disastrous losses by such a course pursued in Missouri, in 1849; and, unless matters change in this State, it is to be feared the merchants and property-holders in this city will yet have it clearly demonstrated that the two per cent. monthly dividends declared by our *locals*, through a partial monopoly of the business of this State, were based on their future loss and ruin.

WHEN AN EXTENDED TERRITORY IS DESIRABLE.

When our *local* companies have their business at home on a safe, legitimate and paying basis, and their officers get to clearly understand and appreciate the business engaged in, they can with propriety throw aside their "*local cloak*," and with profit increase their borders, by locating agencies in the Atlantic and Eastern States, and in foreign ports; and if in the mean time they have opened this State to healthy competition, the companies of other States appreciating the act, will be most likely to tender the right hand of fellowship to their *young* rivals from the golden State; but so long as they do an illegitimate, reckless, expensive, and hazardous business at home; shut the doors of the State against responsible companies of other States; and through immense and compactly located risks stand in constant danger of being ruined in a single conflagration of any moment; they cannot hope to gain either reputation or a desirable business abroad, as their record is sure to follow them, and it certainly is more desirable to *stay at home* than spread out to occupy the position of sweeps to the companies of the Atlantic and Eastern States, and foreign countries, securing only such risks as they refuse.

INSURANCE LEGISLATION.

It has been intimated that the officers of certain of our companies have "laid their traps" for a law which is to drive from the State all Eastern and foreign companies, thus securing them a monopoly of the business, at such rates as will enable them to declare the promised dividends to stockholders; live in

style, and pay fancy salaries at the expense of the public; but we place no confidence in the assertion. The merchants, manufacturers, miners, farmers and property-holders of this coast have rights that must and will be respected; it is necessary to their success in business, and security to their families, that they secure reliable protection against loss by fire in legitimately managed and economical companies, and at proper rates; and our Legislators, acting for the good of the people at large, will not be induced to pass laws compelling their constituents to pay exorbitant rates for a *poor* grade of indemnity; or limit them in the number of companies to select from, in order that a few of our heavy operators known as "the ring," and residing within the limits of San Francisco, may pocket fat dividends and play with the stocks. With actual security in view, and that is the object sought, we must have the protection of old established, experienced and wealthy corporations; their presence makes our companies all the stronger, as they give them the benefit of their experience, while they equalize the burthen of risk; and all sensible men will admit that should a sweeping conflagration occur in this city, involving a loss of *millions*, it would be very desirable to have at least a portion of the loss paid by the companies of other States and countries; for if insured entirely in our *local* companies, and by chance they with the aid of their stockholders' private fortunes were enabled to pay every dollar of claim, the State would still be impoverished in the amount of the loss, as while that amount of property had been carried away or made worthless by the Fire Fiend, no money would come into the State to fill up the gap; and as to the buncombe cry of our *local* officers, that these Eastern companies carry large profits out of the State, we have only to refer to the small *profits over interest on investments* made by our *local* companies, since they organized to prove these statements unfounded, allowing that our *local* companies have done as legitimate a business as their Eastern and foreign rivals. True, dividends have been paid; but let those who doubt us figure on the interest secured on investments of these companies, and it will be discovered that the *interest paid the dividends*; and as to the surplus shown by the companies in their statements, you have only to figure up the millions at risk, and the amount necessary to re-insure the same, to discover that instead of a profit on the business proper it would require all surplus accumulations, and about $300,000 of the capitals of our companies to get them clear of the business of underwriting. In their annual state-

ments they claim to have re-insurance funds exclusive of capital, but we claim they do not figure correctly on the issue, and in proof of the fact would state that our leading *local* company, in estimating the amount necessary to compensate them for reinsuring the California Home, and which they figured at about $14,000, fell nearly $40,000 short of the mark; so that the Cal'a Home made $40,000 by selling out, and the purchaser lost $40,000 of stockholder's money on account of making the purchase. Now it is our candid opinion, based on facts, that if the Eastern and foreign companies were called upon to pay a loss of $1,000,000 in this city, they would in so doing bring into the State $800,000 in excess of their entire profits from the business on this coast, extending back over a period of ten years; and all will admit that a profit of $200,000 in ten years, out of a business so dangerous, was not so excessive as to invite competition or engender jealousy.

A WORD TO LOCAL OFFICERS.

Officers in our *local* companies, ask yourselves the simple question, would it not be just as easy and far more desirable, business-like and honorable to return to compensative rates and legitimate practices, permitting you to declare regular dividends to your confiding stockholders, than to deprive them of the very interest on the capital invested, that you may have ready means to continue this demoralizing war of rates, and which you know is sure to end in *ruin to your companies and disgrace to yourselves.* The facts are patent that you write at lower rates, take more hazardous chances, and make more reckless contracts than your competitors: in fact so low are your rates, large your risks, and reckless your scramble for business, that our citizens are getting doubtful of the *security* your policies guarantee, and are giving their patronage to your more conservative and aged competitors. The raid on the Ætna and Phœnix seems to be culminating in a family quarrel, much to the detriment of your companies, as you must not lose sight of the fact that the Builders' is as much a *local* company as the Pacific, or the Home Mutual as the Union — reflections on the one injures the other—all are organized under the same general Incorporation Act; the only difference being that the former in each case has less capital than the latter, and invests in risks the others deem undesirable; but so far as low rates and loose practices are codcerned, we would like to see the officer of one of our *local* companies who deems himself and company spotless.

TO THE INSURING PUBLIC.

Before closing we would address a few words of advice to the *insuring public*: So far as rates are concerned it will ever be found that low charges are indicative of poor security, and that it is to your advantage and profit to select your company on the basis of actual standing, rather than on rates charged. Inferior indemnity like inferior merchandize, is forced on the market for what it will bring; and no matter how low the bid the property invariably proves a dear investment. Select companies of age and experience; companies that have solid capitals sufficient to protect their patrons from the most severe conflagrations, without having to make assessments, or call to their aid the "personal liability" of stockholders; companies that have their assets invested in available securities, that can be converted into money on call, and not in mortgages on real estate likely to be made valueless and unavailable by the very conflagration that matures your claim for loss; companies that are firm in their rules, and that make their contracts with a nicety and care that proves they place a value on the policies they issue; companies that are economically managed, and that from *small* risks scattered over a large territory, are enabled to earn respectable profits and pay regular dividends, without extorting from their customers, or endangering their capitals by large and compactly located risks, subject to single conflagrations. Pay such companies the rates asked, feeling assured they write as low as solvency to themselves and security to their patrons will admit of, and that in return for your premiums they give you reliable protection. Follow up the records of companies that ask low rates, make loose contracts, grant excessive insurance, pay fraudulent claims for popularity, and vilify companies that protect their honest patrons by contesting claims of dishonest men, and you are sure to ascertain the fact that they are of the buncombe order—that their officers are new in, and ignorant of the business engaged in—and that sooner or later they will "turn belly up," with their outstanding risks and liabilities unprovided for. The stock in such companies is looked upon as "fancy," and while their patrons are expected to accept their policies at *par*, the stock on which these contracts are predicated is, as a general rule, a drag in the market at a *very liberal discount.* If the notes of a merchant, or bills of a banker are offered at a liberal discount on their face, both merchant and banker will be looked upon with suspicion, and will not have the confidence of the community; still our *local* companies ask the insuring public

to accept their policies at par, when, with one exception their stocks rule considerably below that standard, and the stock of the other company has fallen about 60 per cent. within the past year. (See table, p. 4.) You are told it is your duty and to your advantage to "patronize home institutions;" but we would ask, in what way have these institutions benefitted this city or State at large? True they have built fine offices in this city, and pay municipal taxes; but it is the Eastern and foreign companies that pay taxes for the benefit of the State at large, and by reference to the annexed article from the *Call* of the 22d February, it will be discovered that our city journals deem *local* companies a *detriment* rather than a *benefit*, and that even if able to furnish as reliable security as the older companies of other States, based on cheap capital, the State would be better without such institutions.

MISUSED CAPITAL.

"It has long been a serious question among thoughtful business men if our *local* insurance companies are not, in one sense at least, productive of more injury than benefit to the interests of the State. True, the premiums they receive for insurance are kept here, while the profits realized from premiums paid foreign insurance companies go out of the country. It is contended that the remaining here of the premiums is the *only benefit* conferred upon the State, in a business point of view, by our *local* insurance companies. The alleged disadvantages worked by them will appear below. *Owing to the cheaper rates of money which prevail at the East, foreign insurance companies can afford to insure property at lower rates of premiums than can our local companies.* The aggregate capital of the *local* Insurance Companies is upwards of $3,000,000. Owing to the necessity of keeping this capital safe for the stockholders, as well as handy for use in case it should be called for to meet losses by fires, it cannot be loaned or invested in business and industrial enterprises of vast moment to the State at large; it can be used *only in San Francisco*, and here only in a narrow line of business. *The industry of the State is thus virtually debarred from the use of this vast amount of capital, which, if invested in mines, factories, farms, vineyards, and other industrial enterprises, would be productive of immense general benefits.* The necessities of the case are such that the companies cannot invest their capital in such enterprises if they would; consequently it is virtually locked

out from the use of the business of the country. Suppose the companies were not in existence, what would be the probable result? The money they have under control belongs to several hundred stockholders, in sums of $10,000 to $100,000 each, each of whom could use his own at pleasure, and most of whom would certainly be striving to invest it in some way to make it produce something. *Some would, beyond doubt, try their fortune in mining enterprises, some in manufactories, some in vineyards, and the money of all, or nearly all, would in some way be invested in some productive enterprise or other, thus affording employment for labor, developing the resources of the State, and contributing to enhance the general wealth and prosperity.* For these reasons it has been suggested that if the capital now invested in our local fire insurance companies had remained in the hands of the original stockholders, it would have produced ten times the benefit to the general business of the State that it has done. and there is much reason in these suggestions, for *now the capital of the companies is withdrawn from the general business, contributes next to nothing to the encouragement of its industry, and operates, so far as the public is concerned, only to give an unnatural present value to city real estate property.* Of course it will be understood that these remarks are made without any ill feeling toward the companies in question, or to any of their members, but for the purpose of showing that at least so far as the public interests and general business welfare of the State are concerned, *they would have been more benefited and farther advanced had the capital now controlled by the insurance corporations remained in the private hands of the present stockholders, and subject to their individual control.* Whether or not that policy would in the long run have proven most profitable to the stockholders themselves, is a matter for those most interested to determine. We shall not attempt the impertinence of dictating to capitalists what disposal they shall make of their money, but the money capital of the State being the aggregate earnings of its inhabitants, business men would like to see it invested in those channels where it is calculated to produce the greatest good to general industrial and business pursuits. The savings' banks of this city are so regulated by law that only a very small portion of the large capital they control can be used to aid and encourage mechanical, manufacturing, commercial and mining enterprises; and the present business needs of the State are such that every dollar possible of its capital should be made

available for industrial enterprises. *With ten millions or more of capital locked up in savings' banks, to be loaned only on city real estate, and over three millions controlled by insurance companies, and in like manner diverted from general business channels, there is no wonder that money for business purposes is dear;* and so long as we have high rates of interest we cannot expect to make much headway at developing our varied resources, increasing the general prosperity, and adding to the aggregate wealth of the country."

If officers, stock-holders and policy-holders will benefit by our remarks and suggestions, we will feel amply rewarded for trouble in compiling this work; and as "underwriting" is now a favorite subject for discussion, we promise to favor our friends and the public with Chapter III, so soon as our companies file their next annual statements, say in January, 1868.

TRUTH AND JUSTICE.

Gen. Bernardo Reyes

And His Detractors.

TRANSLATED FROM

"La Voz de Nuevo Leon."

MONTEREY, JULY, 1903.

CALIFORNIA STATE LIBRARY

TRUTH AND JUSTICE.

Gen. Bernardo Reyes

And His Detractors.

PREFACE.

Truth is indestructible.

It is the Gibraltar against which bold falsehood, cunningly devised contradictions and criminally slanderous misrepresentations dash, unavailing, and are wrecked. It can be denied but not destroyed; covered over but not effaced.

The sun does not cease to shine because clouds obscure it. In time the clouds disappear and its brilliancy again envelopes the earth.

In this case the truth is like the sun.

History can not be obliterated nor can facts be changed. Neither can that which is criminal be converted into that which is good, simply because those who are interested in so doing either do not, or will not, recognize the truth. They may misconstrue or deny facts, mask evil and seek to influence public opinion by misleading articles and illustrations, but in the end truth and justice must prevail. The circumstantial mists which may be conjured up, and which by intrigue may be condensed into storms of passion, must disappear before the piercing rays of the sun, and with them the human and perishable interests responsible for their creation.

To simply state that a man is injurious to society—that his actions in this or that position have been without beneficial effect and prejudicial to the people—is not sufficient to establish belief or influence in the slightest degree a just and honest mind. The man's history must be reckoned with, his past actions must be placed in the balance against the statements of those who desire his downfall. If there are those who, ignorant of the questions at issue, hesitate under the influence of false statements, their doubt can exist only until such time as Truth breaks down the barriers of calumny and misrepresentation and appears to confound its enemies. And those who are familiar with the past—who know the facts, but, through hatred or frenzy, seek to bury them—must, with the passing of passion and excitement, although there is no public confession or change of hostile attitude, acknowledge the truth unto themselves—the same truth which through it all it was impossible for their consciences to deny.

To proclaim a crime a meritorious act—to assert that it is just, and simply on such assertion reclothe actions with the versions of those whose all is staked on the crime going unpunished or being attributed to some one else—is but to weaken the foundation of sophistical reasoning and hasten the toppling of the temple of falsehood. The crime remains the crime as much as the truth remains the truth.

The greater the endeavors of malcontents and slanderers, the greater the recoil and their consequent confusion. Their attempts to defame prove the boomerangs that strike them down.

Military Services of General Reyes.

Among the military men of Mexico few have played a more active and prominent part than Gen. Bernardo Reyes, Governor of Nuevo Leon.

His career is a part of the history of the Republic. His opportunities and achievements are recorded. The facts stand and can not be changed.

But like every other public man of prominence, Gen. Reyes has his detractors. In Mexico, as in every country of Republican government, the press is used as the principal avenue of attack on public men. It is only natural, therefore, that there are newspaper men—or, at least, alleged newspaper men—acting under the influence of personal spite or jealousy, or as agents for others inspired by similar feelings, bold and impudent enough to assail him. It is such writers who seek to betittle Gen. Reyes' military career and impeach his administration as Governor of Nuevo Leon.

In so far as Bernardo Reyes, the soldier, is concerned, there is but need to refer to Mexico's history for the facts.

It was as a boy that Gen. Reyes entered on his military career. When he joined the Republican forces in the War of the Intervention he was but 16 years of age. From the beginning to the end of that patriotic struggle, through the dark hours when the heroes of Mexico bravely waged unequal war against the Imperial and French armies, Bernardo Reyes, the youthful soldier, was to be found in the Independent army, fighting in the States of Zacatecas and Jalisco and participating in the engagements of Calvillo and Villa Nueva. Later, having been promoted from Second to First Lieutenant of Cavalry, he assisted in the bloody capture of Zamora, and then, with the Western forces, to which he belonged, moved against Queretaro. In the latter memorable engagement he was wounded in a hand-to-hand fight.

The fortunes of war next led him to become attached to a column of Cavalry, which, observing the movements of Marquez, contributed to the victory against the Lieutenant of the Imperial army, in the engagement of San Lorenzo. In this engagement Lieut. Reyes received a bayonet wound, but notwithstanding his injury he took part in the beginning of the siege of Mexico. He returned to Queretaro at the close of the so called "Drama of the Empire."

The Republic triumphant, the services of the then Lieut. Reyes were next called for in Sinaloa—in the year 1868—where a rebellion against the Government was in progress. His campaigning there extended into 1869, and the following year he was sent to Zacatecas and Tamaulipas on a similar mission. For his bravery and success in the latter service he was promoted to the rank of Captain.

Near the end of the campaign in Zacatecas the young Lieutenant, then but 20 years of age, received a third wound in a hand-to-hand encounter. In the quelling of the Zacatecas trouble he distinguished himself in a brilliant manner, not only by frequent demonstrations of his well known bravery, but also in his ability as a strategist. A notable instance of this was the saving of an ammunition train of the troop to which he belonged

from falling into the hands of a powerful force of the enemy.

In 1873, at Mojonera, after vanquishing numerous hordes of Indians, headed by the savage chieftan Lozoda, he was elevated to the position of Platoon Commander.

The nation to which the services of Bernardo Reyes were consecrated next gave recognition of his military ability during the campaign of Tepic. While in the field as Platoon Commander he was made honorary Lieutenant Colonel. In one of the many engagements in which he participated in Tepic, at Santiago Ixcuintla, he was fired on at arm's length, and, although wounded, he routed many of the enemy in almost hand-to-hand combat.

At that time his name was the war cry of the soldiers. That their admiration was given to a man of great character, resolution and purpose was demonstrated by an occurrence in connection with a retreat of the Government troops. The retreat was arranged at a council of war, but Col. Reyes could not bring himself to agree to it. Accordingly he requested and obtained consent to withdraw from the command of the troops under him. The forces alluded to returned to Tepic, and Col. Reyes, after first gaining a victory over the enemy by a sabre charge, returned with them at the head of an advance brigade.

Following the Tepic campaign the young Lieutenant Colonel was sent with a detachment of cavalry to the aid of Sinaloa, in which State the second General in command of the Revolutionary army, Donato Guerra, was making war. He completely routed the revolutionists at Tamiapa in 1876, and for that distinguished victory, in which the number of prisoners captured was greater than the troops he commanded, he was recommended for promotion.

About that time the Government of Señor Lerdo was terminated by the success of the revolution headed by Gen. Porfirio Diaz. Gen. Diaz was elected President of the Republic, and one of his first acts as Chief Executive was to call to his side the military men who had honorably fallen with the former Government. Among them was Col. Reyes, whose rank as Colonel was immediately confirmed by Gen. Diaz. Following this the President gave the young officer several special commissions to execute, and the promptness and success with which they were carried out won him the rank of Colonel in the regular army.

Col. Reyes next saw active service in the northern part of the Republic, and at the Sierra de la Huasteca, quelling uprisings. From there he went to Sinaloa against ex-Gen. Ramirez Terron, where, among other engagements, there occurrred that of Villa Union, classed in military annals as a brilliant feat of arms. In this engagement Col. Reyes had two horses shot from under him and received two serious wounds. Notwithstanding his painful injuuries he mounted a third horse, and, leading his men in a gallant charge, put the enemy, made up of infantry, cavalry and artillery, completely to rout. This was accomplished in face of the fact that the enemy had all the advantages of position and numbered fully three times the force he commanded, fully one-half of his troops having been killed or wounded during the battle. This extraordinary triumph was so highly appreciated by the Supreme Government that Bernardo Reyes was at once advanced

two places higher in military rank, being commissioned a Brigadier General.

Following his return from Sinaloa, Gen. Reyes was given command of the First Military Zone. He subsequently started an active campaign against the Apaches in Sonora, and, with the consent of the Government, arranged some grave local difficulties in that State. He then took command of the Sixth Military Zone with headquarters at San Luis Potosi. From there he was sent to the Northern frontier, where he also satisfactorily adjusted some political difficulties. He ended his work by generously pardoning hundreds of men who surrendered to him unconditionally in Monterey, December 1, 1885, and who had riddled his clothes with bullets and killled five soldiers who accompanied him, shooting at a distance of only six meters. Following this he subjugated innumerable gangs of suspicious characters, thereby bringing peace to the Frontier States.

Gen. Reyes' next military achievement was to intervene, in 1893, with the consent of the Federal Government, in a most efficient and beneficial manner, in local trouble which disturbed the State of Coahuila. The trouble was terminated by his intervention, those who had raised the flag of rebellion surrendering their arms to him.

As has been stated, these facts concerning the military career of Gen. Reyes are a part of the history of Republican Mexico. They stand in complete refutation of the statements of those who endeavor to make light of the military services of Gen. Reyes to his Nation. It was because of his unusual ability along military lines that Gen. Reyes, in 1900, was called upon by President Diaz to take the office of Minister of War. While serving in that distinguished capacity, with the approval of the Chief Executive, he issued certain well directed orders looking to the ending of the civilizing wars in Sonora and Yucatan. And, as Minister of War, he attracted to Mexico the attention of the entire civilized world by raising the standard of the Mexican army, by awakening patriotism among the youth of Mexico, and by grasping with the hand of a master every opportunity to enhance the military strength and consequent standing of the Mexican Republic.

In the same year that he was called to Mexico City to become Minister of War, Gen. Reyes, on the eve of completing 20 years of faithful service as a Brigadier General, was promoted to the high office of General of Division. In this promotion Bernardo Reyes, the self-denying, brave and patriotic soldier of the Nation, reached the apex of a glorious military career. When he resigned as Minister of War, near the end of 1902, he also presented his resignation as General of Division, but this resignation of a position secured by a life-time of efficient service was not accepted by the President of the Republic, ever a discerner of justice.

The efforts of the malcontent newspaper writers to belittle the military achievements of Gen. Reyes—achievements which stand for a life devoted to the service of his country—engender only a feeling of contempt. To place their antecedents in the balance against his antecedents, their pretensions against his accomplishments, would serve to show how far above them towers the man they assail—from what depths they cry out against him.

Administration of Gen. Reyes in Nuevo Leon.

Gen. Reyes, dividing his military and political duties, was in the year 1885 named by the Senate Provisional Governor of Nuevo Leon. Following the action of the Senate, he was duly elected Governor by the people of the State, and successively re-elected up to the present time, holding the office continuously with the exception of the two years he was in Mexico City as Minister of War. During those two years he never for a moment lost interest in the affairs of the State. When he went to the National capital to take the high office conferred on him by the President, it was with the formal authorization of the Legislature of Nuevo Leon.

The apparently conscienceless writers referred to, shutting their eyes to the truth which confronts them on every hand, declare that the administration of Gen. Reyes as Governor of Nuevo Leon has been without beneficial results, and that his rule has been that of a tyrant, hampering the interests of those he governs.

History again opens its pages to reveal the truth.

That portion dealing with Nuevo Leon prior to the administration of Gen. Reyes shows a State where security was unknown, divided by political differences, the Government divorced from the governed, with elements scattered and dejected, its energies paralyzed and its fountains of riches closed. But almost from the time Gen. Reyes took up the reins of government history discloses a vastly different picture. It is that of a new Nuevo Leon, a regenerated State where peace and its blessings reign, where life and personal interests are guaranteed, whose laws encourage industry and commerce, and whose people are awake to the voice of Progress.

With the opening of the Reyes administration harmony of interests was established between the people of the State as well as between the Government and the governed. The rights of every man were established and assured, and an era of peace, progress and prosperity began.

The finances of a State constitute one of the most important branches of government, and to the finances of Nuevo Leon Gen. Reyes turned his attention early in his career as Governor. The lowest possible taxes were uniformly placed in effect and maintained, and today the equal of the system of taxation in Nuevo Leon can not be found in any other State of the Mexican Federation. The Treasury Department was placed on a strictly business basis, and in a short time the State receipts increased to such an extent as to enable the Government to meet all expenses and accomplish great betterments—betterments which had not been even dreamed of by the officials of previous administrations.

The municipal taxes, which, when Gen. Reyes became Governor, varied with each municipality, being established through special regulations for each case, were made uniform without delay, and general laws governing municipal taxation, effective throughout the State, were framed and issued.

To go into details relative to the changes accomplished by Gen. Reyes in this branch of the Government would be to cover unnecessary

ground. It is suffice to give certain figures which speak eloquently of the benefits accruing to the people of the State under his administration.

In 1885, when Gen. Reyes took charge of the Government, the estimated revenue of the State was $92,000, and it had been necessary for the preceding administration to collect an additional $16,000 in taxes to cover a deficit in expenses.

Two years later the revenue of the State had doubled, by virtue of which fact it was possible to increase the force in the branch of Public Instruction, apply more than $50,000 to the betterment of Monterey and leave a cash surplus of $20,000 in the Treasury.

In the year 1891 from $92,000 the receipts of the State reached the sum of $220,000. During that year some taxes were lowered while others were abolished. Notwithstanding the fact that notable betterments were made in various State branches, and a large amount expended in public improvements, the surplus cash on hand amounted to $30,000.

In 1895 the State receipts were still further increased, and the excess cash on hand in the Treasury reached the sum of $70,000.

During the four years following, terminating with 1899, the financial branch of the State Government was firmly established on a safe basis, additions were made to all the public services of the State, and it was possible to devote to public improvements $135,000 out of the cash in the Treasury.

The taxes, through which these benefits and betterments were accomplished, were not raised, the average per capita taxation being estimated at 65½ cents.

At the beginning of the Reyes administration, in 1885, few cities of Nuevo Leon even covered their expenses. Monterey, the capital and city of by far the greatest revenue, owed even its school teachers their salaries for no less than four months.

By 1887, two years later, the receipts and disbursements of the various cities had not only adjusted themselves, but at was possible, by virtue of surplus receipts, to add materially to the Public Instruction fund.

In 1890 the receipts of the various cities of the State amounted to..... $605,000.

The disbursements in the same year amounted to..... $548,000.

Resulting in a surplus of... $57,000.

In 1895 the annual receipts were increased to..... $1,475,000.

The disbursements were increased to..... $1,444,000.

In 1895 the general result was as follows:

Receipts..... $1,893,000.

Disbursements..... $1,871,000.

The additions to the expenses represented improvements in all the cities of the State.

Such figures proclaim the excellency, correctness and morality of an administration far better than words of praise.

This splendid condition of affairs in Nuevo Leon was reached without negotiating loans or increasing taxes.

During one calamitous period of drouth Gen. Reyes informed the Chamber of Commerce, made up of men from the various walks of commercial life, that some of the taxes might be lowered, inasmuch as there existed surplus cash which had been intended for public betterments. Then a most remarkable thing happened, in itself a high compliment to the administra-

tion of Gen. Reyes. The taxpayers of the State declared themselves as against a reduction in taxes, on the ground that the taxes were already low enough and the improvements being made of great benefit to the Commonwealth.

Every other branch of Government was just as keenly looked after by Gen. Reyes, from the time he assumed charge of the State affairs in 1885. The machinery of Justice was placed in perfect condition, and work in that Department pushed as rapidly as possible.

Statistics show that in 1885 the Supreme Court disposed of 330 civil and criminal cases, and the lower Courts 1,100 cases. In 1899 the higher Tribunals disposed of 1,250 cases and the lower Courts 3,200 cases.

The laws of the State, which at the beginning of the Reyes administration covered only the period of 1862 to 1882, inclusive, were under his administration compiled for the period extending from 1824 to 1830, and from 1883 continuously to date. The series of volumes representing this important and laborious work were published.

The codes of both civil and penal branches, as well as those regulating legal procedure in Courts, were subjected to thorough examination, and by arduous work were reformed to meet the demands of progress. Laws were issued governing the organization of Tribunals, and additional Courts were established in order to facilitate the administration of justice. During the period under consideration not a single accusation was ever made against a member of the Judicial Department. The most severe morals and the greatest possible judicial dispatch has characterized this branch under the Reyes administration.

Of the material work accomplished by Gen. Reyes in connection with the Department of Justice, the massive stone State Penitentiary stands as an everlasting monument.

Public Instruction—the greatest power in the hands of a sovereign State for the elevation of its people—was up to the time of the beginning of the Reyes administration conducted along ancient and inadequate lines, notwithstanding laudable efforts on the part of preceding administrations to revolutionize the system. Lack of resources caused it to languish to such an extent that the primary schools were unable to show more than a minimum attendance, the preparatory schools in charge of the State made no progress, and the professional schools of Medicine and Jurisprudence lacked even suitable buildings for the necessary instruction. The Normal School for the instruction of teachers was conducted in the form of a bi-weekly class, the students gathering in a city school room; no step had been taken looking to the instruction of female teachers for the primary grades.

In this branch of public service a marvelous change was worked almost with the opening of the Reyes administration. The entire system of Public Instruction was revolutoinized under the direction of the State Executive, the work of providing adequate facilities was at once commenced, and the professional courses were thrown open to the women of the State. Increased attendance followed fast on the heels of changes and improvements, and by 1899 the primary school attendance, which in 1885 was 12,000, had doubled. Special educational

laws, framed along the most modern lines of Public Instruction, were promulgated, and Government inspectors were detailed to see that the laws were complied with, insuring uniform instruction throughout the State.

In 1885 the State of Nuevo Leon owned few buildings for school purposes, and the appropiation for providing such buildings was entirely insufficient for material progress in that direction. Two years later, however, it was possible to arrange to apply $100,000 yearly to the needs of Public Instruction, and in 1895 it was possible to increase this appropriation to $127,000.By that year the public school property, by reason of the erection of new and modern buildings and their equipment with suitable furniture, rperesented a value of $179,000. Four years later this value had increased to $240,000, and the annual expenses of instruction had reached $140,000.

These figures demonstrate the wonderful progress made by Public Instruction under the guidance of Gen. Reyes, and the thousands of children drinking the waters of the Fountain of Knowledge form one of the most striking and impressive pictures of his administration.

Particular attention was given to the improvement and advancement of the Normal branch of instruction, and early in the administration of Gen. Reyes special quarters, suitably equipped, were provided for temporary use. Finally a magnificent building was constructed for exclusive use as a Normal School. For years the graduates of the Nuevo Leon Normal School have spread over this and adjoining States.

To the women of the middle class, particularly, the opening of the avenue of Normal instruction proved an immeasurable boon. Up to that time they were practically without means of higher intellectual advancement, and debarred from professional pursuits. With the Reyes administration came the extension of Normal instruction to include female as well as male students, and provisions similar to those made for the male students were made for the girls and women preparing themselves for the work of teachers and for professional life.

Gratifying results immediately followed this innovation in Public Intruction. The female teachers, holding primary certificates, promptly satisfied the existing necessity for the propagation of primary education.

Through this Normal instruction the woman of the middle class was enabled to fit herself, not only for the highest educational positions, but also for commercial life and the telegraph service. She was prompt to take advantage of the opportunities offered for advancement, and since the opening of the Reyes administration hundreds of girls have annually studied enthusiastically in the professional courses provided for them.

Preparatory instruction was at the start given the necessary progressive impulse, and rapidly extended with the perfection of the system and the improvement of facilities. In the year 1885 the value of property belonging to that branch of Public Instruction was estimated at $60,000. By reason of additions made to the Civil College building, the purchase of furniture, scientific instruments and other accessories, the property has more than doubled in value.

In the Schools of Medicine and Jurisprudence new and modern rules and regulations were established, their branches of instruction enlarged and

adequate buildings and facilities provided for their work.

The Committe of Public Instruction, over which the Governor presides, was entirely reorganized on a convenient basis for the supervision of that important work of the Government.

"If Gen. Reyes," it has been said in writing on this subject, "could point to no other accomplishment than the reformation of the system of Public Instruction, whereby modern methods were introduced and Normal School advantages provided for people of both sexes, he would, by reason of this alone, be entitled to the gratitude of both the present and future generations."

With relation to State progress and general public improvements the administration of Gen. Reyes presents an unequaled record.

In the report made to Congress in 1885 by the predecessor of Gen. Reyes was the folllowing:

"Commerce.—Our commerce has been materially decaying. In all towns of the State it is in a very afflicted condition."

"Agriculuture and Stockraising.—These two sources of State wealth are found in a more lamentable condition than in past years."

"Industries.—The constant competition of our neighbor Republic has brought industrial growth to a standstill."

These quotations from the Government report show the lamentable condition of affairs in the State of Nuevo Leon in 1885. At that time the total number of mines being exploited was 25. But scarcely had Gen. Reyes entered upon his duties as Chief Executive when the decaying industry of mining was exempted from taxation for a long period, with the result that it at once began to flourish. In 1887, but two years later, the number of mines being worked was 123, in 1891 157 and in 1898 280. The capital represented in the working of the 25 mines in 1885 was $98,000, and by 1898 the investment in mining property in Nuevo Leon amounted to $7,500,000.

Through the agency of general laws, all industries established in the State were exempted from taxation for a period of seven years, and similar exemption was also made in the matter of uncultivated agricultural lands. All houses erected in any city of the State were exempted from taxaiton for a period of five years, and in cases of important buildings this exemption was extended to cover periods up to twenty years.

These beneficial and progressive laws caused men and capital to enter into the work of upbuilding Nuevo Leon. Liberal concessions, provided for under these laws, encouraged heavy investments, and great numbers of laborers were called from every quarter to do the bidding of capital. To these laborers better wages were paid than ever before in the history of the State, and the general prosperity of the laboring classes was thereby advanced.

The industries of the State, which in 1885 were represented by four factories, multiplied at a marvelous rate, and within a few years 37 prosperous industrial concerns were in active operation in Nuevo Leon, representing an investment of $22,000,000. As a natural result of the industrial activity the demand for property increased, and its value correspondingly advanced.

With the regeneration of the State railways and telephone lines were ex-

tended, thereby giving greater impetus to commercial progress. At the beginning of the Reyes administration there existed but 10 kilometers of street railway. This was promptly increased to 40 kilometers. The 250 kilometers of telephone lines in operation in 1885 have grown until the network of communication now represents 3,000 kilometers.

The erection of factories continued, commerce advanced with rapid strides and thousands of workmen hastened to participate in Nuevo Leon's festival of work. The decadent Commonwealth, whose sad condition was heralded abroad through the official Government report of 1885, was transformed, as though by miraculous power, into a prosperous and progressive State under an administration which calumniators dare to call harmful.

Some idea of the great increase in business in Nuevo Leon may be gained by a comparison of the receipts of the Stamp Tax offices. In 1885 the total receipts amounted to $80,000; in a comparatively short time they reached the sum of $1,000,000.

The census of the State in 1885 gave the population as 241,000; ten years later, in 1895, the inhabitants of Nuevo Leon numbered 334,000.

It was Gen. Reyes who ended the old boundary question, which had been the source of much serious friction between the States of Coahuila and Tamaulipas. He added to the State of Nuevo Leon a strip of land extending to the Rio Grande, establishing at the river the frontier town of Colombia. In this connection it may be appropriately stated that Gen. Reyes, acting in accordance with the instructions of the Interior Department, arranged for the publication of a perfect geographical map of the State. This is now about ready for press, and represents six years of hard work by the Scientific Commission detailed on this mission. Through this work the State of Nuevo Leon will have its boundary lines well marked.

From the very day that Gen. Reyes took up the reins of government, the course of Nuevo Leon has been forward. His administration is a history of progress; there has not been one day of retrogression. He has guaranteed all interests, and his guarantee has brought people of other States and other Nations to live within the boundaries of Nuevo Leon. And still this is the man and the administration that enemies of their State and their Nation seek to misrepresent.

In a report of Gen. Reyes' predecessor may be found the following:

"The financial condition of the State generally, as well as the financial condition of the towns within its borders, has prevented the carrying out of many contemplated betterments."

This statement was a true portrayal of conditions in 1885, but with the dawn of the new era following the accession of Gen. Reyes the new Chief Executive took up the matter of public betterments with the energy that has characterized his actions throughout his life. Beginning with the completion of the Municipal Palace of Monterey and the Monterey Market House, and the building of the Juarez bridge, he extended his work to the smaller towns, where public buildings and school houses were erected, and where, as in the capital, plazas, public gardens and highways were provided. These betterments were followed by

the paving of the streets of Monterey and other places, the erection of notable public buildings, prominent among them schools for higher education, and the erection of monumental edifices such as the State Penitentiary and the Government Palace. All these improvements bore testimony to the flourishing condition of the State, as they represented an aggregate expenditure of over $2,000,000.

And in the face of this record of public good, of untiring energy for the welfare of the State, the slanderers of Gen. Reyes cry out that his administration has not been beneficial.

The administration of Gen. Reyes is a part of the history of Nuevo Leon; it forms its most brilliant pages. This history in ineffaceable.

In the course of human events it might be possible for hours of insecurity, in so far as persons and property are concerned, to return to Nuevo Leon; but the fact that wrongdoing was persistently prosecuted and guarantees secured by the strict application of laws for the suppression of evil during the administration of Gen. Reyes must stand as a matter of record—a monument to the efficiency of his government.

It is within the range of possibility that a time might come when the finances of the State would be again exhausted, and the Treasury Department relapse into its former impoverished condition. But State history would still tell of that period of abundance, during which the Treasury, after satisfying all the needs of the Government, which became more complex as the State progressed, distributed the excess wealth by making public improvements throughout the Commonwealth. And no less would State history tell that the period of abundance was due to the beneficent and business-like rule of Gen. Bernardo Reyes.

Human agencies might re-establish the ancient system of juduicial procedure, modify laws in a reactionary manner and dispense with Penitentiary regulations; but the record of the present activity in judicial affairs, the progressive reforms made in the laws, the Penitentiary regulations and the Penitentiary itself, would, under such calamitous circumstances, announce to the world that under the administration of Gen. Reyes the people of Nuevo Leon enjoyed ideal laws and just and progressive judicial procedures.

The present efficient system of Public Instruction might be destroyed, the school houses emptied of their pupils, the teachers left unpaid, the professional instruction of women done away with, the schools and colleges confiscated and used for other purposes; but that under the government of Gen. Reyes Public Instruction was elevated, that strict attention was given to the selection and training of teachers, that public schools were erected in various parts of the State, that to thousands of children was extended the boon of education, that to women was given the means of professional advancement—all this can not be obliterated and must stand an everlasting attest to the character and purposes of the man and his fitness to hold the high office of Governor of one of the greatest States of the Mexican Federation.

Every reaction within human power might come to pass; every artery of commerce might be closed and every voice of industry stilled—but the

monuments which Gen. Bernardo Reyes has reared during the years of his Governorship would endure, great testimonials to the flourishing condition of the State and its people during the time that he watched over the destiny of Nuevo Leon. Regardless of the circumstances of the future. these monuments will forever bear witness to the faithful service of Gen. Reyes to his State, to the excellency of an administration which deserves the sincerest praise of all just people —that administration which, owing to political differences contrary to the interests of the country, has been assailed by those who, lacking even a pretext on which to base their allegations, have resorted to malicious falsehood and slanderous misrepresentation.

Can the defamers of Gen. Reyes, in their frenzied eagerness to obliterate the facts of his administration, destroy the landmarks of its daily progress and raze the monuments erected by his hands?

It would require ages to accomplish such pernicious work. But, granting that such would be possible, with the clearing away of the dust of the ruins History would appear, unchanged, to pay its tribute to the actions of a man who faithfully served his Nation and his State.

The name of Carthage and the renown of its greatness exist today, notwithstanding its destruction during the period of the Punic Wars.

At the present time, happily for the Nation, war, with its battles—lamentable but oft times bringing glorious victories—is not engaging attention. Instead of powerful factions in arms, a contemptible war of intrigue must be reckoned with, the venomously poisoned arrows of those involved in it being directed at the spotless armor of a gallant soldier and a great statesman.

The Political and Criminal Intrigue Against General Reyes.

What the Republic of Mexico owes to Gen. Reyes as a soldier, and what the State of Nuevo Leon owes to him as a Governor, has been superficially touched upon.

Throughout his career as a soldier and statesman the personality of Gen. Reyes stands out clear and strong, ever an influence for good, But against this personality have been launched charges—so utterly absurd as not to deserve consideration were it not for the maliciousness with which they are clothed. The hands that launched these charges are the same that fain would tear down the monuments of History and consign to oblivion the antecedents of Gen. Reyes.

"It was Gen. Reyes," declare these enemies of public good, "who, on the 2nd of April, last, ordered that an opposing political demonstration be terminated by armed force."

The demonstration in question was held under the mask of the celebration of the glorious victory achieved by Gen. Diaz in action against the Imperial troops, 36 years ago.

The question naturally arises, why was it that these intriguers had the audacity to launch such absurdly false and slanderous charges without fear that their infamy would recoil on them in the shape of legal punishment due such action? A brief explanation is due, because under ordinary circumstances it would seem inconceivable that such calumny could be given birth in the midst of a society for whose good the accused had consecrated his services—in a law abiding community where acts deserving of esteem and respect should not be allowed to be made the objects of attack on the part of the audacious and criminal.

At a time previous to the attack on Gen. Reyes preparations of great importance, affecting the general politics of the country, were in progress at the National capital. Gen. Diaz, wishing to retire from the Presidency, inspired by a noble and patriotic desire to see his country continue to march majestically onward under the direction of a personality other than his own, undertook the work of combining and harmonizing certain elements with a view of assuring the permanency of his great National work.

A certain man was selected to lead in carrying out the work outlined by President Diaz, and to him was given power and prestige. The foremost of his supporters had previously formed a political group, prominent in which were some men who had never inspired the confidence of the country. A homogeneous Ministry was formed, of which Gen. Reyes became a member. But from the day that he took charge of the Department of War certain members of the group before mentioned manifested hostility to the Executive of Nuevo Leon. This hostility and consequent lack of confidence soon made it apparent that it would be impossible to amalgamate the different elements, and this finally proved to be the case. As a result

Gen. Diaz abandoned his plans for a change in the Presidency.

The hostility of these partisan factions to Gen. Reyes grew to such an extent that their leaders even refused to respect the wishes of the one who should have been their director, and who, it may be said, was on the most friendly terms with Gen. Reyes. Gen. Reyes was attacked by these factions through the medium of various politically colored journals, and, being vigorously defended by other newspapers, wishing to prevent his name being used as a pretext for dissensions in the Government—as he officially stated—he resigned his office as Minister of War and returned to Nuevo Leon to again take up the reins of Government.

With the return of Gen. Reyes to Nuevo Leon, his enemies carried the war on him to this State, using the advantages which the high positions in which they had been placed—for the purpose of effecting the contemplated political change—in an effort to injure him.

In Nuevo Leon they sought malcontents to serve as their instruments against Gen. Reyes, whose re-election was the subject of discussion from the hour of his return to Monterey. These malcontents were found in the chaff which the Reyes administration had swept aside in its onward march of progress, and they, encouraged by the leaders and the leaders' journals in the National capital, ignoring merit, truth and justice, took up calumny and slander as their weapons sible to attack only through false charges.

These traitors to their State were informed by the principals in Mexico City that, in order to bring about a change of attitude on the part of the Supreme Head of the Nation, who is invariably on the side of justice, and who favored Gen. Reyes, who was the universal candidate of the people of Nuevo Leon for re-election as Governor, it would be necessary to go to the greatest possible extremes. As the opposing group had no one worthy to be placed as a candidate against Gen. Reyes, they were reduced to the plight of having to choose a ridiculous figure, respecting whose antecedents it would be loss of time to speak. With this man as their "dummy," they began an active war of misrepresentation and slander. Being adepts in such lines, without antecedents to protect and nothing to lose, they entered with impunity into one of the blackest intrigues ever launched against a public man of prominence since the restoration of the Republic.

From the leaders in Mexico City the Nuevo Leon traitors received instructions to use every means to provoke a state of siege in this State, and were lured into the belief that in the event of their being interfered with by the local authorities they would be protected by Federal action; that Federal troops would come to their assistance; that the influence of persons of high standing would be used in their behalf, and that they would even find favor with members of the National Congress. As a result of this deception there was witnessed in Monterey, the capital of one of the most prosperous and progressive States of the Mexican Republic, an exhibition of audacity on the part of criminals and scandal mongers, in the midst of exemplary society, probably unparalleled in the history of any Republic.

From out of this hotbed of intrigue there issued the lawless yells in the manifestation of February 5th, last,—the seditious sheets published in this city, whose falsehoods were strenuously echoed by those dailies in Mexico City in the service of the malicious leaders there, who lost no opportunity to fan the flame of sedition —the rowdyish actions on the part of sixteen students of the School of Jurisprudence—the plans for the banding together of inebriates and others more criminal, in which company insults to the Government were as frequent as unmentionable acts—the threats of the sheet "Redencion," which, in its first issue, appearing in the month of February, announced that a political demonstration against Gen. Reyes would be made on the 2nd of April, the day on which the Nation celebrates the anniversary of a great triumph, in Monterey and other towns of the State (which latter proved impossible for the reason that in none of the smaller towns were there to be found persons willing to follow the agitators in the capital)—the threat published in the sheet "Justicia," referring to a demonstration which it stated was already arranged for—the instructions for the purchase of pistols at the hardware stores and pawnshops in anticipation of the events planned to follow—and finally the responsibility for the seditious proceedings of the 2nd of April at the Plaza Zaragoza, when two citizens, innocent of any part in the demonstration, were killed, together with three policemen, all of whom were shot from behind, and three citizens and three policemen were wounded seriously.

And it is this murderous action, which had been threatened and for which preparations had been made, which was started by some pre-arranged means or by some of the drunken demonstrators, and in which the victims of treacherous shots in the back were policemen, not one of the demonstrators being killed, which the originators, believing themselves protected in any extreme of calumny, have sought to charge to the Chief Executive of the State, whose every thought and action has been for the welfare of the people he governs.

No better demonstration of the low moral level reached by the enemies of Gen. Reyes could be possible than this accusation, hurled at him by criminals and their accomplices, in the hope of injuring his political standing, as though a low, barefaced lie, shouted from the gutter by intriguers and propagated by a maliciously directed press, would be sufficient to accomplish such an end.

But perversions of truth and lying offers of help were necessary to encourage the idle and vicious persons in Monterey, and the members of the "Ponciano Arriaga" Club in Mexico City, which organization is known by its Anarchistic tendencies; to turn the heads of others and throw them into criminal action; to encourage, in the midst of cultured society, in a Nation characterized by order, justice and morality, the daring and insolence resulting in the recent alarm—daring and insolence that reached such a stage that actual criminals, strutting about with unequaled boldness, dared to attempt to shoulder a crime for which they were responsible on the shoulders of the Governor of the State, a man holding front rank in the confidence and respect of the Nation.

And that "Ponciano Arriaga" Club, of Anarchistic tendencies, dared to put the slanderous accusation in form and take it before the dignified and honorable Representative Body of the Nation.

It is but reasonable to suppose that in the due course of time the penalty of the law will fall on the intriguers and defamers, not only in satisfaction to the persons so viciously attacked, but also in satisfaction to the society outraged and the Nation injured. Should the Nation allow such actions to go unpunished it might expect that misrepresentation and falsehood would regularly appear at the Bench of Justice to plead for the downfall of just and honorable men, who by sacrifices and ability had gained the respect and admiration of their countrymen. Reparation will be as certain as the case is exceptional, as far reaching as the intrigue formed by the enemies of a faithful public servant.

Formidable antagonism has already come to the scene. It could not be otherwise. Antagonism to that residue found far below the goodness and greatness of the people of Nuevo Leon; to the insatiable, unrestrained ambition of those who for years have conducted a school of intrigue in the capital of the Republic; to that group of men who claim to be liberals but are not liberals, in whose midst the Medusa headed Anarchy looms up; to all those corrupt elements which were combined to form that venomous black wave that was launched against the figure of Gen. Reyes for the purpose of overthrowing and destroying him. It is antagonism against incapable and outcast people, weak and vicious enough to be easily influenced into any manner of corruption; against the intriguers of Mexico City, whose ambitious aims are in direct opposition to the wise and prudent policy which has the welfare of the Republic as its end—a policy supported by Gen. Reyes under the regenerator of the Nation, the illustrious Gen. Diaz—and who are eager to destroy any man and any policy found blocking their traitorous steps; and against the Arriaguists, who might be more properly spoken of as Anarchists, who dared to file monstrous charges against the President of the Republic, as they dared to file charges against Gen. Reyes, before the National Congress.

The black wave was rent asunder with the criminal outbreak of the 2nd of April, and swept away with the last effort, the so-called "accusation."

Protests and Testimony Against the Slander—Evidence of Latter.

When the black wave formed by the combination of vicious elements threw itself upon Gen. Reyes, it did not find him alone, much less weak. It came upon him in the midst of his duties as Governor of Nuevo Leon, and it found him surrounded by the affections of a people acclaiming him as their candidate for re-election—a great people, who, notwithstanding the fury of the attack made against him, hesitated not a single instant in supporting him throughout the territory of the State. And while obstructionists and malcontents, encouraged by the leaders in the intrigue, made crude war upon him, these staunch supporters, in various ways and in various places, gave striking evidence of their admiration and friendship. On the morning of the 2nd of April, at the very hour when less than a kilometer distant guardians of the public peace were being assassinated by the enemies of Gen. Reyes, 2,500 of these supporters gathered together to publicly acclaim him as their candidate for re-election. And in that patriotic demonstration Gen. Reyes generously counseled his supporters to respect the political opinions of his opponents.

With the rending asunder of the black wave of misrepresentation and slander came the imprisonment and scattering of those responsible for the crime of the 2nd of April. And later came the contradiction of their false charges by overwhelming testimony.

On March 25th, 1903, the commercial, banking, professional, industrial and laboring interests of Nuevo Leon sent to Gen. Reyes the following written manifestation of support and gratitude:

"General: On the occasion of your temporary absence from the Executive Office of this State to worthily occupy the high position of Minister of War and Marine in the Cabinet of the illustrious President of the Republic, Gen. Porfirio Diaz, the banking, commercial, industrial, professional and laboring interests of the State expressed, in writing, regret at your separation from the State, which, owing to your energy, ability and unimpeachable integrity, had taken front rank among the States of the Mexican Federation.

"This expression of regret carried with it the gratitude of the people of the entire State, who fully appreciated the benefits they had received at your hands.

"By virtue of your wise, energetic and prudent government, General, peace was brought to Nuevo Leon and perfect harmony reigned among all classes. These changes in conditions attracted large amounts of capital, which was distributed throughout the State; resulted in the opening of many schools; caused commerce to flourish; created industrial and credit institutions, which greatly increased the general wealth, and brought about a multitude of other benefits which are now the pride and honor of this powerful and industrious people.

"And now, by reason of your return to again take charge of this State, taking advantage of the fortunate cir-

cumstances of the recent inauguration of two mammoth industries, which were started under your previous personal administration, and which it is believed will be of great benefit, not only to the State of Nuevo Leon, but to the economic conditions of the Nation, we, who are not connected with politics, who devote ourselves to our work, who ask from the Government only the guarantees desired by those who seek an honest livelihood, who look for the preservation of the peace established by the illustrious President of the Republic, Don Porfirio Diaz, again make public our sentiments of gratitude, previously expressed, tendering another vote of confidence for your beneficent and honorable administration."

The Victoria Club, in an enthusiastic meeting held in the Juarez Theater on the night of April 25th, agreed to formulate, and did formulate the following protest, which, signed by over 500 citizens of Nuevo Leon, was submitted to the Congress of the Nation:

"We, the undersigned members of the Victoria Club, residents of Monterey and in the full enjoyment of our rights, in meeting assembled, on the date below written, in the Juarez Theater of this city, hereby make known that we have learned through several newspapers of the Capital of the accucation made against Gen. Reyes, Governor of the State of Nuevo Leon, before the National Congress, by the members of the Ponciano Arriaga Club; that as residents of this city we are fully informed of public occurrences, particularly that of the 2nd of the present month, and the statements embodied in the accusation here referred to are absolutely false.

"Further, that we wish to make known that the accusation, relative to which Congress will take proper action, not only affects the official accused, but gravely, and without reason, injures the State, because it creates the false impression, should the statements of the accusers be believed, that an intolerable condition of affairs exists. And we consider it our duty as citizens of this State to publicly proclaim that such a condition does not exist, for the reason that silence on our part, who are in a position to know, might be construed as a partial confirmation.

"As a result of these circumstances we therefore resolve:

"First—That the Victoria Club protests against the false and misleading statements contained in the accusation presented before the Congress of the Nation by the Ponciano Arriaga Club, directed against Gen. Bernardo Reyes, Governor of Nuevo Leon.

"Second—That these original resolutions be taken to Congress for the information of the members, and that if possible they be filed with the original accusation.

"Third—That the protest contained herein be transmitted, by telegraph, to the President of the Republic, for his knowledge.

"Monterey, April 25th, 1903."

At a mass meeting of residents of Monterey, in which were a number of witnesses of the occurrences of the 2nd of April, and among whom all professions and various lines of business and labor were represented, resolutions were prepared and forwarded, on April 26th, the same as the resolutions of the Victoria Club, to the Chamber of Deputies in Mexico City. These resolutions, which were signed by more than 3,000 persons,

including men of every walk in life, millionaires as well as laborers, read as follows:

"We, the undersigned citizens of Monterey, in the full enjoyment of our rights, having learned of the accusation against Gen. Reyes, presented before the Chamber of Deputies of the Federal Congress by the members of the Ponciano Arriaga Club, from absolute knowledge of the occurrence referred to, declare that the accusation is notoriously false.

"We further declare that the accusation against Gen. Reyes is prejudicial to the credit and good name of the State, inasmuch as, regardless of the truth, the Chief Executive is charged with atrocities; and we take this means of formally denying the assertions made, pending the investigation, which, when completed, will make known the true facts.

"And as an act of patriotism, as this matter pretains to the Government of Nuevo Leon, and according to our duty as citizens who have received unlimited benefits at the hands of the accused Chief Executive, we have adopted the following resolutions in the hope that they may throw light on the facts and aid justice to prevail:

"First—Resolved, that the undersigned protest against the false statements contained in the accusation made against Gen. Bernardo Reyes, Governor of Nuevo Leon, and presented before the Chamber of Deputies of the Congress of the Union by the members of the Ponciano Arriaga Club.

"Second—Resolved, that these resolutions be sent to the Chamber of Deputies for the information of its members, and for the purpose, if they see fit, of being attached to the accusation in question.

"Monterey, April 26th., 1903."

In a meeting held on April 25th, the Honorable Legislature of the State of Nuevo Leon adopted the following significant resolutions:

"Resolved—That the Thirty-first Constitutional Congress of the State of Nuevo Leon tender a vote of confidence to the Governor of the State, Gen. Bernardo Reyes, and declare that his executive actions are strictly in accordance with law.

"Resolved—That these resolutions be transmitted to the Federal Congress and to the President of the Republic, and also to the Governor of the State."

This fire of public indignation in Monterey extended to other towns of the State, among whose inhabitants were some witnesses of the occurence of the 2nd of April, and similar public protests against the accusation concerning Gen. Reyes were made. Montemorelos, San Nicolas Hidalgo, Mina, Cadereyta, Allende and Gral. Teran contributed to such protests. Among the protests is also a letter, signed by 29 opponents of Gen. Reyes, who side with justice and protest against the false accusation.

At the head of the multitude of protests brought out by the accusation against Gen. Reyes is that made by --- Deputies for the State of Nuevo Leon to the Chamber of Deputies of the National Congress. It reads as follows:

"In the recent session, held on the 20th of the present month, an accusation was presented before this body by the Liberal Club 'Ponciano Arriaga' against Gen. Bernardo Reyes, Governor of Nuevo Leon, which State we have the honor to represent. Not

withstanding that in the preamble of this document various acts are set forth, designated as grave crimes, attributed to this official, they do not, as might be expected, form a basis for the charges made, but merely serve to show the malevolence and malignity of the accusers. For this reason they do not deserve our consideration. In respect to the direct charges, however, it is different. Their nature is such as to require our immediate intervention, for fear that our silence might be construed as a passive confirmation, or a tacit confession of our unwillingness to comply with our most sacred duties.

"The accusers, echoing the false and calumnious fables invented by the agitators in Nuevo Leon, and their more or less sincere accomplices in the City of Mexico, accuse Gen. Reyes of having broken up, by means of armed force, a parade of his political opponents, held for the purpose of celebrating the anniversary of the glorious victory of the 2nd of April; of causing police and soldiers distributed in the streets and on the roofs of surrounding buildings to fire into the crowd. To this startling story they add statements of imprisonments, orders for assassination, etc., some serious, some absurd, but all showing malevolence and venom.

"It seems almost beyond belief that history could be so falsified, facts so changed and truth so disguised, so shortly after an occurence, especially when communication is now instantly possible and railroads bring cities so close together. It also seems passing strange that so little respect should be shown the National Representation as to bring to its knowledge such a series of defamations, whose simple presentation should excite the indignation of all just and impartial men.

"The Deputation from Nuevo Leon, the majority of whose members were in Monterey at the time of the occurrence referred to, now formally makes known to this body that the statements made by the Ponciano Arriaga Club are wholly false, and would deserve nothing but contempt did they not disclose such grave guilt on the part of the originators.

"The truth is that the opposition to Gen. Reyes, which in this accusation is made to appear the victim of an official attack, hypocritically mixing their petty interests with the celebration of a great National triumph, apparently prepared for the proceedings, of which they now complain, beforehand, arming themselves, spreading alarming information throughout the city, and boldly announcing that blood wold flow on the morning of the 2nd of April.

"The disgraceful occurrence of the day mentioned is attributed solely to this same opposition, the members either provoking what happened by their attitude and contempt for public order, or deliberately planning the entire proceeding which resulted in the murder of several policemen and the accidental killing and wounding of several men in the crowd.

"It is not the desire of the Nuevo Leon Deputation to prejudice the opinion of the Chamber in respect to this matter, for the members neither have the right to do so, nor would it be judicious to become involved in a proceeding, which has been regularly and properly taken up, before the time prescribed by the Regulations. They only demand that the action of this Honorable Body be awaited, when

they feel that the position they have taken will be justified and their good names sustained.

"It is incontrovertible that, if the statements made in this accusation were true, it would be the duty of the representatives of Nuevo Leon in this Honorable Body, more than that of any others, to impeach the Governor of that State for malfeasance in office.

"The people of Nuevo Leon have conferred on the members of this Deputation their representation; they are bound to maintain inviolable the rights of the people who elected them to the positions they occupy.

"Our silence, therefore, would merit the sharpest censure, indicating either a lack of knowledge of our duty or complicity in the intrigue, especially as the individuals who have raised their voices before this House, assuming our functions and pretending to know things which have no foundation in truth, are foreigners to Nuevo Leon. This meddling of foreign agents in the affairs of our State, was there the slightest pretext for such action, would imply neglect of duty on our part. This, then, is the reason we have deemed it our duty to clearly state our position in the matter of this accusation. And, in order that there may be no misunderstanding, we announce that our silence up to this time has signified neither passive confirmation of the charges made against the Governor of Nuevo Leon nor submissive acceptance of them. We have not raised our voices because the crimes alleged at Monterey do not exist outside the imaginations of a group of conscienceless malefactors; because what has been said relative to these matters has been the result of an infamous intrigue, conducted by a handful of politicians, blinded by ambition and impelled by jealous hatred; because our positions as representatives of the people of Nuevo Leon, whom they attempt to make appear as victims of unjust treatment and savage assault, is not on the level of such scandalmongers, but on the side of truth, justice and right. We leave to the accusers in this matter the satisfaction of having brought to the attention of this Assembly the most colossal defamation in the history of the Republic; the satisfaction of having attempted to vent their black hatred against a high official of this Republic, engaging with the voice of rancor the attention of this grave audience.

"Subsequent events will show whether defamatory and slanderous accusations, which are prohibited and punishable under the penal code, are means for revenge permitted in this Hall; whether such acts cease to become punishable as crimes before the Congress of the Nation. If here, as elsewhere, they are crimes, they should be severely dealt with, particularly as they would then constitute an outrage on this Honorable Assembly.

"In the meantime, we discharge our duty by herewith formally declaring that the charges brought by the Ponciano Arriaga Club against the Governor of Nuevo Leon are absolutely false and libellous, and this document is framed to set forth our position in the matter.

"We beg of the Assembly that this document be sent to the First Commission of the Grand Jury, the members of which are already proceeding

with the investigation of this matter.

"Hall of Sessions of the Chamber of Deputies,

"Mexico, April 22nd, 1903.

"Francisco Martinez Baca,
"Manuel Serrano,
"Jesus Maria Cerda,
"L. Sepulveda,
"Jose Lopez Portillo y Rojas."

Gen. Reyes is not alone, and furthermore is not weak. He will see the black wave so furiously launched against him disappear without leaving a single stain.

Truth and justice are eternal and will prevail.

As was said in the beginning:

History can not be obliterated nor can facts be changed. Neither can that which is criminal be converted into that which is good, simply because those who are interested in so doing either do not, or will not, recognize the truth.

Future events in connection with this matter will more clearly reveal the truth and bring to Justice its proper homage.

Just Action By Certain Opponents of Gen. Reyes.

From "El Espectador" is taken the following article:

"Monterey, April 28th, 1903.
Dr. Ramon Treviño,
"Director of El Espectador,
"City.

"Dear Sir:—For the confusion of certain persons, who, we are sorry to say, are natives of Mexico, we beg to hand you herewith a letter received by us, signed by various gentlemen of the opposition, relative to the disgraceful occurrence of the 2nd of this month, for publication in your fearless daily if you deem the same consistent. We are

"Yours truly,
"Florentino Cantu,
"Ricardo B. Panza."

"In compliance with the request of the transmitters, the letter addressed to them follows:

"'Monterey, April 23rd, 1903.
"'Messrs. Florentino Cantu and Ricardo B. Panza,

"'Gentlemen:—To the various confidential questions, which, based upon our friendship, you have put to us, we take pleasure in replying as follows:

"'First—We are not in favor of Gen. Reyes' re-election as Governor of Nuevo Leon, not because we do not consider him deserving of that exalted honor, but because we believe, in accordance with Article 81 of the State Constitution, that he is debarred from re-election, and because we would prefer to see in his place a son of Nuevo Leon.

"'Second—We were at Porfirio Diaz park among the participants of the celebration on the morning of the 2nd of April, and were at Plaza Zaragoza at the time of the disgraceful occurrence of that date, which we all sincerely regret.

"'Third—Some of us were on horseback in front of the Casino building at the hour of the riot, and can testify that not a single shot was fired from the building. Had there been firing from the building it is only reasonable that some of us, forming the line in front, would have fallen. The same can be said of the Municipal Palace from where, we know, no shots were fired. And here, we of the Cavalry, wish to announce that we were not commanded by poltroons and cowards, like Carlos Leal Isla and Andres Viteri, who were taken by Adolfo Garcia Flores from under a pile of rubbish in the river bed after the riot.

"'Fourth—We went to the demonstration at the Alameda thinking that it related to a National celebration, and the only chief we recognized was our able friend, Don Miguel Morelos-Zaragoza.

"'Fifth—We reiterate that we went to the demonstration because we understood that it was exclusively in honor of the hero of the glorious battle of the 2nd of April, 1867, to render the honor and love we feel for our great President, General of Division Don Porfirio Diaz, and we had not the slightest intimation of what was to follow.

"'Sixth—We can state in absolute truthfulness that among the participants in the demonstration of the morning of April 2nd, lead by the members of the Nuevo Leon Electoral Convention, there were many intoxicated persons, and that one of these

was responsible for the beginning of the riot that followed.

" 'Seventh—We gladly take the opportunity to do justice to the Chief of Police, by stating that he conducted himself in a most meritorious manner, doing all that was possible to preserve order and urging on his subordinates the greatest prudence.

" 'Eighth—We are for peace, order and harmony, and wish, for the honor of our State, that the press abstain from exploiting this unfortunate occurrence, for which in no way was our authorities to blame.

" 'We hereby authorize you to make such use of this letter as you see fit.

" 'We are

" 'Respectfully yours,

" 'Justo Cortes, Emilo Rordiguez, Felipe J. Padilla, N. Garcia Garza, Manuel Flores, Antonio Ovalle, Julio Marina, Marciano Gomez, Manuel E. Garza, Cesareo Cantu Trevino, Daniel Cantu, José R. Cantu, Severo Mendoza Escobedo, Pedro Garza, Donaciano Verastegui, Federico Arreola, Amador Bocanegra, Ezeqquiel S. Garcia, Eligio Ramirez, E. Sanchez Martinez, Pedro Sauceda, H. Arvalo Gregorlo Ramirez Garza, Francisco Delgado, Pedro Nieto, Lorenzo Silva, Espiridion J. Martinez, Daniel Espinosa, Pascual Torres.' "

The foregoing letter sets forth the manifest mendacity of the newspapers "El Pais," "Diario del Hogar" and "Monitor," which stated, in publishing accounts of the riot of April 2nd, last, that from the Municipal Palace and Casino building the men, whose conduct brought about the riot, were fired on.

Slowly, but surely, the malevolent intentions, born and nourished in a hotbed of criminal intrigue, are being exposed.

The newspapers herein referred to, echoing those which were voicing slander and jealous hatred in their columns, attempted the contemptible task of defaming the authorities and people of Nuevo Leon.

Today, however, facts are seen in their true light. The letter referred to places each in its proper sphere—the Government of Nuevo Leon in its own dignified position—the vituperative scandal mongers in the depths which tney have chosen for their abode.

APPENDIX.

The following is the official declaration of the Chamber of Deputies in connection with the accusation filed against Gen. Bernardo Reyes, Governor of Nuevo Leon:

"Secretary of the Chamber of Deputies of the Congress of the Union, Mexico. Section of Archives No. 347.

"The Chamber of Deputies of the Congress of the United States of Mexico, in exercise of the faculty conceded under Article 72, Letter A and Insert V and 105, of the Constitution reformed on the 13th of November, 1874

"DECLARE: That the citizen Governor of the State of Nuevo Leon, Gen. Bernardo Reyes, is not guilty of the official crime of violation of individual guarantees, and attacks against personal suffrage, of which he has been accused by Camilio Arriaga, Antonio Diaz Soto y Gama and associates.

"Mexico, May 29th, 1903."

LECTURE

DELIVERED BY

M. D. BORUCK

IN THE

Assembly Chamber of the State Capitol at Sacramento,

ON

Thursday Evening, Feb. 28, 1895

ON THE

PRESS

AS IT WAS—AS IT IS—AS IT SHOULD BE

FRANCIS & VALENTINE, PRINTERS, 517 CLAY STREET, S. F., CAL.

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M. D. Boruck for forty years—continuously—editor and proprietor of the California Spirit of the Times and Underwriters' Journal, published in San Francisco, delivered a lecture on the above subject, on the date named, in the Assembly Chamber of the State Capitol; the use of that beautiful hall, having by resolution of the Assembly, been tendered him for that purpose. There was a very large and intelligent assemblage present that gave earnest attention to all that was said, and which was presided over jointly by Hon. Thomas Flint Jr., President *pro tem* of the State Senate, and Hon. John C. Lynch, speaker of the Assembly. The lecture was as follows:

Mr. Chairman, Ladies and Gentlemen: I wonder if I shall startle you, being a newspaper man myself, if I commence by asking the question, "Why is it, that the killing of an editor nowadays, is looked upon as a crime for which much extenuation can be urged?" I do not know if the question might not be a little more roughly framed and put in this form, "Why is it, that it is almost impossible to find a jury who will think it incumbent upon them to return a verdict of guilty against a man who has taken the act of reparation in his own hand?" Whether or not I shall be able to fully answer these questions in the short time for which I shall ask your attention, I must, of course, leave to your decision; but this I can assure you, that in attempting to frame such an answer, I shall deal very plainly with the truths of a profession, with which I have some little acquaintance.

You must not misunderstand me though; I do not intend to pose as a public prosecutor of any one particular man or paper; and I need scarcely say, I suppose, that I am not here as a public penitent. Neither am I here as a reformer. I despise the name; for if I did undertake that *role* I would as a matter of impartial justice, if not decency, be compelled to commence with myself and I would have departed this life almost at its inception. What I want to do, and what I propose doing, is to lay before you certain facts, and through the medium of this audience, and whatever reports I may be vouchsafed in the press, to call public attention to a state of things for which I think there should be some remedy, and for which the public collectively are themselves in a great measure to blame.

It will be, perhaps, in order to look back

a little before asking you to inspect the present, or to apply the remedy.

The growth of the newspaper press in the United States has been one of astonishing rapidity. Up to the time of the revolution, the newspaper was a costly luxury in the American colonies, cared for by few, and read by still fewer. To make the contrast between the times still greater, I must add that its publication was anything but a profitable undertaking to those engaged in it. It may surprise you to learn that printing was introduced in the new world very soon after its invention in the old. It may still further surprise you, to learn that it was not in British or French, but in Spanish America that the printing press was first set up. To Don Antonio de Mendoza, Viceroy of Mexico, and sponsor for the name of our Cape Mendocino, the honor belongs of establishing the first printing office this side of the Atlantic. The first printer was a Spaniard, Juan Pablos by name, and the first work issued from his press was called "A Spiritual Ladder to Ascend to Heaven," and a reference to this period of our state's history may not be amiss at this time.

In 1542, Mendoza, Viceroy of Mexico, sent out an expedition under Juan Rodrigues Cabrillo to survey the Western Coast of California.

"Juan Rodrigues Cabrillo, sailed with his two ships from the Port de Navidad the 27ih of June, on a discovery of the coast toward the north. He touched at the Bay of Santa Cruz in California; otherwise called Puerto del Marques del Valle, since Cortes had been there; this he found in 24 degrees of latitude; and following the Western Coast, he came to a bay, to which he gave the name of Mazdalina, lying in 27 degrees and 32 degrees, he made Cape del Songano del Songano; that of La Cruz in 35, and that of de La Galera in 36½; and opposite the last he met with two large islands, 10 leagues from the coast, where they informed him that at some distance there was a nation which wore clothes; in 37½ degrees he had sight of some hills covered with trees which he called San Martin, as he did also the Cape running into the sea at the end of these eminences. Beyond this to 40 degrees, the coast lies northeast and southwest and about the 40th degree he saw some mountains covered with snow; and betwixt them a large Cape which, in honor, to the Viceroy, who sent him, he called de Mendoza or Mendocino; and near it a spacious bay to which he gave the name of de Pinos from the multitude of pine trees of an extraordinary height growing near it. In January 1543, he arrived at Cabo de Fortuna in 41 degrees, and on the 10th of March, found himself in 44 degrees latitude. The cold was very intense. This was the utmost limit of his voyage, the want of provisions, and the bad condition of his ships, not admitting him to make any further progress, so that he returned and, on Saturday the 14th of April, entered Navidad harbor, giving it as his opinion, that such an expedition required ships of greater strength and burden, with the best of sails and rigging,and well stored with provisions; it being very difficult to obtain a supply.

"I have been the more particular in describing the situation and names of the principal parts surveyed on this voyage, in order to compare it with other discoveries, especially as several authors either omit or confound this expedition, which was the last undertaken by this excellent Viceroy in the North of the Pacific Sea." (Venegas, History of California, translation 1739, pages 160 to 162.)

"Mendocino.—In the year 1535, Antonio de Mendoza, first Viceroy of New Spain, appointed by the Emperor, arrived at the City of Mexico, fourteen years after its conquest and surrender, and ordered a survey of the coast of California, wherein Cape Mendocino was discovered, and so called in honor of the Viceroy. Mendocino, from which the country derives its name, is the patronymic of Mendoza."

Report of General Vallejo, on the Derivation and Definitions of the names of the several counties of California. (Appendix to Journal, 1st. Sep. Cal. Legis.)

There is no recorded evidence that Cabrillo made any landing on this part of our Coast.

The first record of any landing by white men on our shores, is that of Sir Francis Drake, who in the *summer* of 1578, landed at the bay which bears his name.

Drake took possession of the country in the name of Queen Elizabeth, giving it the name of "New Albion." It is said in the narrative describing this visit, that before sailing away, our General set up a monument of our being there as also her Majesty's right and title to the same, viz: "*A plate nailed upon faire great poste, whereupon was engraven her Majesty's name, the day and year of our arrival there, with the free giving up of the province and people into her Majesty's hand, together with her highness picture and arms in a piece of five pence of current English money, under the plate whereunder was also written the name of our General.*"

It is a very peculiar thing, Mr. Chairman, that the earlier printing in all countries seems

to have been devoted to the spread of religion and good principles, while the latter works always seem to have degenerated into such publications as would by no means furnish a ladder to ascend to heaven, but would rather furnish a toboggan slide by which we may easily slip down to—well the other place. So it came about, that up to the middle of the 18th century, or to be more exact, 1730, all the works that were published in the Spanish dominions, were of a religious, moral or educational nature; and even the paper or "gazette" that was published, was filled almost entirely with accounts of religious functions, with descriptions of processions, (not strikers' organizations), consecrations of churches, beatifications of saints and festivals of *auto da fe*, etc. This gazette, the *Gazette de Mexico* was its name, was not, however, a daily paper, but was a monthly publication. But even this was superior to anything produced in the colonies, that is, the British colonies, till nearly the time of the Revolution.

We are accustomed to think of the Catholic Church as exercising a far tighter restrictive policy over its people; of more closely intermingling the temporal with the spiritual, but it is the fact nevertheless, that the Puritans went far beyond the Catholics in that respect. With all their sanctimonious smoothness of speech, they would not only hold the consciences, but the lives and acts of their people with an iron grip. Then, too, there were no strikes in those days, and the reign of the Irons, Powderleys, Sovereigns, Gompers and the Debses was unknown. They preached free forgiveness to all repentant sinners, but they abhorred free speech and a free press. Oh! but if they could have lived in 1895. In this latter phase of their abhorrence they were haply wise beyond their times, and—shrewd old roundheads that they were—they showed themselves possessed of much prophetic spirit therein. The Caviliers, too—possibly because of their aristocratic leanings—had a very strong objection to the liberty of the press, and there was little to choose between the restrictive laws of Virginia and those of New England. You may smile, but it is on record that Sir Wm. Berkeley, Governor of Virginia, in 1671, answering some inquiries addressed to him by the Lords of the Committee of the Colonies, wrote: "I thank God, we have not free schools, not free printing, and I hope we shall not have these three hundred years; for learning has brought disobedience and error and sects into the world, and printing has divulged them, and libels against Government." "God keep us from both." Had he lived in this century he would have become a raving maniac. The Virginian authorities did their best to bring about the answer to Sir William's pious aspiration, for when ten years later, one John Buckner, ventured to set up a press, he was promptly called before the Governor and Council, and ordered to enter into a bond not to print anything thereafter, until his majesty's pleasure should be known. So to, when in 1690, a Boston printer issued a paper entitled "Public Occurrences, both Foreign and Domestic," the authorities of Massachusetts promptly put their foot upon the innovation, and a second number of this long-named journal and long-felt want never appeared. Four days after the publication of the first issue, the general court spoke of it as a pamphlet which came out contrary to law, and contained reflections of a very high nature, and the court thereupon strictly forbade anything in print without a license first obtained from those appointed by the governor to grant the same. I respectfully refer this point to the striking dailies of San Francisco. So fearful of the fulminations of the authorities were the men of Massachusetts at the time—although they got over their fearfulness before a century had passed—that it was fourteen years later than the date of the "Public Occurrences," before any other Boston printer had the temerity to start a newspaper.

On the 14th of April, 1704, however, there appeared the first number of the *Boston News Letter*. It was printed by Bartholomew Green, was edited by John Campbell, then postmaster of Boston, and was the real pioneer of the American press.

In nothing, perhaps, has time worked greater wonders than in the history of the "American Press." To-day instead of one struggling weekly published in a big city; and

subject to the surveillance of every dogberry in office, there is scarcely a respectably sized village that has not its paper (and it generally has two, between which there always exists the bitterest rivalry), while throughout the country the daily publications, can be counted by the thousands —certainly not less than 10,000. As to the proprietors, and there is where the funny part comes in, they, instead of belonging to the smuggling and ink-stained literateurs of Grub Alley, are among the millionaires of the land, take an active share in the affairs of the nation, build their city mansions, have their country nooks, are looked upon as among citizens, and have been known as aspirants to the highest political honors. Instead of being the creature, the subservient of the laws, the press of to-day is almost superior to that power, laughs at the statutes regulating libel, freely criticises the highest judicial authorities, is largely instrumental in the passage or presentation of legislative acts, and has really attained the dignity and power of an estate.

When the framers of our country's system of government put their brain-pans together, it was decided that there should be three branches, distinct, yet intimately dependent one upon the other, a sort of governmental trinity in unity. These three branches were —the Congress, or legislative, to which was given the power of making laws: the President, or Executive, to which was given the power of seeing those laws enforced (and the president does not always do that); and the supreme court, or judical, to which was entrusted the interpretation of those laws. To-day a fourth power has been added—the trinity has become a quaitette, and we have the press, or (hyper) critical branch of the government, with the self-arrogated right of finding fault with everything that does not please the editorial council—or which does not pay the proprietor.

If that critical power were properly exercised, there would be no possibility of such an address as this; but when we see dishonesty criticised by those who are dishonest, public malfeasance put in the pillory by those who never possessed the quality, then, I say, the critics, the critics themselves, should be criticised, and I propose to indulge in that criticism.

In no department of a newspaper has there appeared a greater deterioration than in that known as the editorial or leader. Here, it is absolutely a case of moral deterioration, combined with mental inferiority or managerial carelessness, and thorough sordidness. Fifty years ago, the leader was the backbone of the paper. It represented the great thinking power of the man conducting it, or rather I should say it represented the great thinking power of the institution, for those were days when the editor was the paper, and when the proprietor had not set up the almighty dollar, as the ruling deity and made the business office its temple. Men sought the editorials as a school, in which to form their political opinions, and as a forum in which they could follow the clever discussions of the great and commanding questions of the day.

The leaders in the daily papers of that day rose to the highest standard; they were pure in diction and gave expression to the loftiest thought. They were equal to the best essays ever written, or published in book or magazine, and taught the people how to advance in the different spheres of life, and made an impression that was indelible.

How changed all this is, I need scarcely remind you as the events of the last few years, particularly, will testify. The editorials of to-day are a collection of little jabs at this or that; personal attacks, gross, libelous and insulting; the hasty and not always correct review of yesterday's news, and assaults on some other editor's newspaper circulation. They seem to be written in a quarrelsome or querulous mood, and are of no more use to the seeker after information than a pair of rubber boots would be to a dweller in the Sahara.

Fortunately the editorial page is generally skipped by the general public; and its absence would not be missed except by the other newspapers who use it as an easy means of filling a column or two by the aid of a scissors, much paste and a little wit.

But after all, it is not so much in the editorial department of the press that the fault lies, as in the presentation and treatment of

news. Even the most corrupt newspaper hesitates a long time before selling its editorial columns, but the trouble is that the public is not aware of the distinction made in a newspaper office between what is given in the local columns and what is given on the editorial page. By the outsider, all that is published is accepted by him as having the editorial sanction, and it seems passing strange to him that column after column should appear full of the boom of some new project while at the same time no editorial endorsement of the project appears. He would laugh if told the editorial conscience appeases itself by saying to itself—mark you, it is very careful not to spread its conscience further—"I know this project to be a little better than a bunco game, but so long as I do not express any editorial endorsement of it, so long I am blameless." "My news columns can be bought, of course, for the presentation of somebody's ideas, provided those ideas go in as news, but my editorial columns, sir, are priceless; they can never be bought, never, sir, never." Oh! Some civet good apothecary, and quickly as possible. I want to take the taste of the last expression from my mouth.

This is what may be called journalistic sophistry which the public can scarcely be expected to understand, a sort of not letting the right hand know what the left hand does, which may take its place among the great moral wonders of the world.

Sometimes the editorial right hand is so very oblivious of what the news column's left hand is doing, that it will publish in one and the same issue, a stinging condemnation of the brutality of prize-fights and a magnificent report, with spirited cuts of the bloody battle between the "Tar Flat Terrier" and the "North Beach Nonpareil."

Knowing the care which is generally exercised over the editorials, it has always seemed remarkable to me, that the same care is not exercised in the matter of news. I do not suppose there is a paper to-day that will editorially advocate the advisibility of selling every high-school girl a copy of *Moll. Flanders* for five cents, or of issuing *Newgate Calendar* to every boy, in daily numbers, Sunday included.

To the contrary it would most eloquently and vehemently decry any such practices. It would publish—as it has already published—editorials set upon the highest plane of morality and couched in the most vigorous English, against the fiends in human form, who lie in wait beside the public schools to entrap young girls into the purchase of salacious books and obscene pictures. Nay, more; it has even condemned the collection of suggestive cigarette pictures, as one of the insidious ills of the day. Editorials have been published and are still being published, concerning the evils done by the issuance of cheap blood-and-thunder literature. The publishers of such books have been scarified, their suppressions have been demanded, and the growing ranks of the criminal classes have been ascribed to their pernicious effect; there have been loud demands for the suppression of what the newspaper press denominate as "obscene literature." You all know that this is true, and I make the charge without the fear of being contradicted, that the newspapers themselves do all that is vile, that they so vigorously find fault with.

Take the lottery question for instance. Since California became a State not less than $35,000,000.00 has been absorbed from her financial vitals to enrich Louisiana and other lottery gambling centers. And the daily presses of San Francisco particularly have received and are in receipt of fabulous sums of money in payment for sensationally setting forth the beauties of lottery gambling schemes, and in the same issues have denounced the officers of the law for not putting an end to the deleterious system.

Now, I never have believed, and do not now and never shall, that a community can be compelled to lead religious, virtuous or sober lives by legislative enactment. Restrictive laws are all very well in their place, but they become dead letters and only serve to lumber up the statute books, and therefore if lotteries are to be maintained with the aid and influence of the daily press, let us go in for home industry; let us have a California lottery of our own, under proper restrictions, keep the money in the State and let the

charitable institutions be the beneficiaries of the tax imposed for the conduct of such institutions. If people will try the hazard of the die *and they will*, let us imbue them with a kindly disposition, and let us make their action one of charitable intent, and let us testify our appreciation by compelling those who beckon them on to contribute to the support of the sick, the unfortunate and the needy. It was that eloquent divine (now dead) Rev. J. Newland Maffitt, who said, there never was a rose without a thorn, a picture without a blemish, or a pleasure without a pain; but we will reverse all this when we establish the lottery of California.

There is no page in *Moll Flanders* which contains anything more outrageously wrong or suggestively improper than the news columns of the San Francisco daily papers. There is nothing in the *Newgate Calendar* that is more dangerous to the uneasy minds and morbid inclinations of growing boys than the news columns of the San Francisco daily papers. I assert again, without fear of contradiction, that the perusal of the San Francisco daily papers by the sons and daughters of the country will wipe away every vestige of innocent ignorance from their minds, and will as successfully open their eyes to everything that is bad, as if they had learned it by years of experience which have made us old and miserable sinners.

You cannot take up a paper to-day without seeing in it stories of seduction, rape, murder, hangings, shooting scrapes, and raiding of opium dens; the doings of professional thieves, the escapades of loose women, the adventures of lecherous men—the whole catalogue in fact of human vices and depravity. It is not their simple mention that is objected to, but what is objected to, and what every father must object to, is the apparent gloating in abominableness of detail, which marks every one of these reports. I am not arguing this from a hypocritical standpoint, for hypocrisy, thank God! is not one of the ingredients in my composition; but it is in my determination to expose the daily press, as far as I can for its glaring short-comings.

You cannot find a single number of the *Newgate Calendar*, or a single part of the lives of *Pirates and Buccaneers*, or a page of the *Lives of Highwaymen*, or a volume of the dime novel, in which the hanging of any criminal is described with more ghastly fullness than you will find in any of the papers, for which you, our best citizens, are subscribers to-day. Instead of saying that John Smith who murdered Laura Brown, was executed at the county jail this morning, what do we have? Column after column describing the last hours of the miserable man's life upon earth; his conduct in his cell; the duration of his dream-disturbed naps; the trembling of his hands; the formation of his march to the scaffold; the accurate description of each strap which pinions the man into an incapable log; the slipping of the noose; the last agonizing glance of the condemned man's eyes before the black cap shuts out everything; the hanging; the twitching of the limbs; the number of times his chest heaved; and so on, and so on, every particle of hideous detail being gathered up and presented with far more zeal than that with which the writer of the story ever sought for salvation. Add to this, the rehearsing of the crime, for which the man was hanged, with nothing omitted in the way of horrible facts and beastly relations; deck this off with cuts giving what is supposed to be the criminal's portrait and the scene at the jail, and you have to-day's standard report of an execution. In the interest of morality and good taste, the authorities have decided that the execution shall be no longer public; but the press have gone beyond the laws, and in the interest of immorality and bad taste, makes an execution a public spectacle, and admits every one of its tens of thousands of readers behind the jail doors.

Now, let me ask you in all sober seriousness, "What good can result from this publication?" The public knowledge that the law has been satisfied? Scarcely that! For the bare announcement of the execution would be all that was needed, if this were the only one.

The deterrent effect of such detail? Scarcely that! For you know, as well as I do, that the notoriety given to a criminal has a most

magnetic attraction for the viciously inclined, and that there are even men whose longings for notoriety will lead them into crime. *It pays to be notorious.* John Chump has no chance of ever being a hero among hoodlums; but "Jack the Ripper" is a God. This, perhaps, sounds extravagant; but before you say "Yes" to that, let me call your remembrance to the fact that the men who have actually pushed themselves forward as claimants to "Jack the Ripper's bloody honors, have not been counted by the twos and threes, but by the dozen. Guilt concealed has no attraction with the vicious class; but gilt deified, means drunken ease a and rounder's paradise. No honest boy is seized with a shivering fit when he reads the account of the last hanging; and no vicious boy will make a beeline for an honest life, because he sees that the murderer's last hours occupied seven columns of a great newspaper. Eminent jurists, experienced lawyers and wise authorities on penology will all tell you that the publicity given to crime and criminals is the surest way to create crime and criminals.

How often have we seen one dreadful crime followed by another bearing the same finger marks? Was not "Jack the Ripper" followed by other Jacks? And is it not the common saying that when one particularly atrocious murder is published in all its details, we may surely look for another in a few days?

Another argument that may be urged in favor of giving so much space to reports of hangings is, that it will have a good moral effect by showing plainly to the world that crime sooner or later meets its punishment. I would cheerfully subscribe to the validity of this argument, if it were not for the fact that as a tail-piece to the same reports, there frequently, indeed I may say almost invariably, is appended a list of those red-handed malefactors who will still crowd murderer's alley. These same papers are full of the equally detailed reports of the ingenious way in which murdering gentlemen of means have gained their liberty; of continuance after continuance of criminal cases in our courts, until the last witness has disappeared, together with the prisoner's last dollar; of purchased juries; of corrupt or lenient judges; of free scoundrels, and of the abuses perpetrated on society through the monetary construction of our laws. No, ladies and gentlemen; there is no earthly reason why the fact of a criminal expiating his crimes at the end of a rope should be magnified into *the* event of the day.

The same arguments that apply to the harmfulness of the publication of extended reports of hangings, apply still more strongly to the detailed reports of crimes committed; because, here, there is not even the virtue of expiation to extenuate the publication. Let us take any one day's issue of any one of the great dailies from the pile beside me and see for ourselves the contribution to criminal literature that it makes. Staring up in my face from the pages of this number taken at hap-hazard from our file, is the account of a negro, who, after violating the twelve-year-old daughter of his master, was tied to a rail saturated with coal-oil and burned to death. Another column relates how two Indian Territory roughs filled each other with lead, the pleasant exchange only ceasing by one rowdy scattering the other rowdy's brains over the territory. In the next column is the story of a defiant road-robber, who is presented as the hero of many exploits, and who is advertised in big letters as being "proud of his record." The next column furnishes us with a lively shooting affray in Colorado, in which forty shots were fired; then comes the story of a crooked Iowa official; the capture of two murderous burglars. The race war in the South; the details of several more or less startling crimes; the cutting of a negro in a drunken brawl; several stories of domestic woe; the capture of a vicious robber in Lassen county; of how a woman cut her throat with a corn-knife; of sundry assaults and suicides; the beginning and the ending of the Heath murder trial; Mr. Ah Wong Sing's behavior in view of the gallows; the robbery of two stages; the case of Mrs. Deacon and Abeile; the troubles of Mr. and Mrs. Vanderbilt and Nellie Neustetter and Mrs. Drayton and Hallett Alsop Browne, the suit of Mrs. John Martin, etc., etc. And right here let us reflect on the course pursued by the press of San Francisco, or a portion of it, relative to

the two bloody-handed murderers and fiends in human form, whose criminal life has passed into history—EVANS and SONTAG. These men were destroyers of human lives, would-be assassins of innocent men, weak women and helpless children; robbers and thieves; using dynamite the more readily to derail railroad trains, rob messengers and passengers, and interfere with the progress of the United States mail. And then in the weak and counterfeit attempt made to capture them, real murders and assassinations were added to the list. What did the daily press of San Francisco do in this connection? Nothing; absolutely nothing, so far as bringing them to punishment was concerned, but in prose and poetry covering column after column, page after page, where honest merit could never gain a place, a deification of their lives, acts and prowess was printed and published in the interest of the rising generation, and while in not so many words but by implication, they were advised when they reached man's estate to go and do likewise. Is this picture overdrawn? Isn't it the truth, solemn truth before God and man? Who was the most culpable, EVANS and SONTAG, or those who disgraced the State in their deification?

And, on the very day after their capture, one of the great dailies of the city of San Francisco appeared with three good-sized cuts on the title page, illustrating the Bacon Cabin, the scene of the last fight; a group of the men who had been in pursuit of the murderers, and SONTAG as he was taken from the straw stack. The corners of the cuts representing the first and second were held together with a huge bowie-knife thrust through them, and the corners of the second and third were held by a Winchester rifle, a bundle of cartridges and a six-chambered pistol; and this was the reading presented for the edification and education of the young. And this appeared too in a Christmas issue of the paper in question, in which there was evident desire to attract immigrants here, by setting forth the admirable resources of the state; of which EVANS and SONTAG were the most attractive and prominent. Further comment is unnecessary.

What in the name of all that is pitiful does this mean? Is the world all bad, and are we each morning to come to the conclusion that the chief things in this life are those of the blood-and-thunder and beastly school? And now in this connection also, let us for a moment take up the DEBS rebellion; engineered by a drunkard—drunk from whiskey and intoxicated with anticipated power. He was endorsed, sustained and advocated by this same satanic press. He was given encouragement by all of them at the opening of the rebellious campaign, save and excepting one or two. Like the acts of EVANS and SONTAG under the orders of the arch-conspirator DEBS, men were beaten, robbed and assaulted, property was destroyed, the busi- of the country paralyzed, fruit was ruined and allowed to rot, entailing frightful loss on those who had cultivated it and brought it to maturity; trains were derailed and the United States mails interrupted, innocent men were murdered; and yet the daily press of San Francisco said it was the thing to do and urged them on in their brutal course. But for the fact that the conspirators against the government transferred their conspiracy from Chicago to California under the patronage and invitation of the daily press of San Francisco, it would have ended two weeks sooner than it did. But the daily press ridiculed everything and everybody, civil and military, that endeavored to stay the tide of anarchy, until the fiendish murder at the trestle near Sacramento, and which by one of them was characterized as an accident, broke the back of the rebellion and broke the power of the daily press of San Francisco for good or for evil. And when one of the great dailies that urged the "strikers" to "strike" in June and July in order that they might endure poverty in winter; after all was over and these misguided men who were thrown out on the cold charities of the world for a living for themselves and families, not being able to secure reinstatement, were informed by this great daily it would insert an advertisement for them seeking employment at five cents each; or in other words they were invited to drop a nickel in the slot for the benefit of the paper that assisted to steal their employ-

ment from them. OF ALL THE GREAT CITIES IN THE UNITED STATES, SAN FRANCISCO WAS THE ONLY ONE WHOSE METROPOLITAN PRESS SUPPORTED, SUSTAINED AND FOUGHT FOR THE "STRIKERS"; *and those Californians who were blockaded at the East by reason of the operation of the "strike" were compelled to cower under the harsh criticisms of those who held them to accountability for the course of their newspapers. To be a Californian under those circumstances was a badge of disgrace.*

A New York journalist with more leisure than I have, some time ago (and not so very long ago either) made an interesting calculation in the *Forum Magazine* to show the relative importance put by papers to the different kinds of news. Of the New York papers, he found that the *Sun* gave up twenty-one per cent. of its entire reading matter to crime; that the *Telegram* gave seventeen per cent., followed by the *World*, *News* and *Herald* with lower percentages, the average ratio being eleven and seven-tenths of the entire reading matter. Then he took the simultaneous issues of leading papers in New York, Boston, Philadelphia, Chicago, St. Louis and Cincinnati, and found that the average of all these papers was ten per cent. of the space devoted to crime, while religion had to do with just half that. To sports was devoted to but four per cent., and to labor, in which they profess and assume to take so much interest, but two per cent. Amusements, books and art received but shabby treatment; the theatres getting but three per cent. of the entire amount of space; literary matters but two per cent., and art but one-half of one per cent. Figures I know are dry things, but surely these that I have given present in the very strongest way the incontrovertible but miserable fact, that our papers to-day are more than they are anything else, the daily record of crimes.

But, say the editors and proprietors, "we are not the prime offender; it is the public." 'We simply furnish what the public demands. We know that it is a debased taste and we wish that it were otherwise, but if such a taste exist, why, we must cater to it.'' Are they right? Let you before me make reply; but I will answer for you. This is possibly not entirely true; but may it not be also possibly true, gentlemen, that you are in part really responsible for the existence of this taste? You must know as well as I do, that the man accustomed to a simple diet, is satisfied with the diet, and it is only after he has been introduced to the highly-spiced dishes of elaborate cookery that he craves these. So strong was the love of the footsore Israelites for the flesh-pots of Egypt after they had once tasted them, that they would gladly have turned back and endured the whip of the task-master, if only they could sniff once more the savory lentils of the Memphis Valley. Create an appetite for what the papers themselves call "spicy," and you have to pander to it.

I deny that the public taste demands this style of literature. Have the people been polled on the proposition so as to arrive at a just conclusion? What was the numerical strength in favor and what against? I deny that the public taste of itself, is depraved, except so far as the press of the day makes it so. Suppose there was no news published relative to a brutal murder, a cruel seduction, or a season of debauchery, what would the people care? Nothing. Not knowing anything in regard to it, there would be no surprise at its absence, or inquiry as to its truth or falsity.

I know, however, of a lady prominent in society in San Francisco, with a family of growing sons and daughters. She stopped taking any of the San Francisco dailies. She was told by a friend she would never know what the news was. She replied that she would accept the situation rather than have it served up every day to her enveloped in slime and filth. Being a woman taking great interest in state-craft, particularly in connection with national matters, she subscribed for a Chicago paper free from the glaring defects of the San Francisco press. Does this look as if the people preferred indecency in their daily newspapers? The heart of man is deceitful above all things and desperately wicked we are told, but surely there is no reason why that deceit and desperate wickedness should be paraded before the world. It won't make us better to be told we are bad;

the weak spot in the ice marked "dangerous" is always the most attractive, and the painting of human nature as it is, only means the horror of the charnal house.

Upon one objectionable feature of to-day's paper I can but say little because the subject is one that can scarcely be referred to in an audience of this character, or in decent language. I mean the filthy advertisements. What sort of false balance between right preaching and wrong doing is it that publishes the trial of an abortionist in one column, and advertisements of abortionists in the adjoining? And how is it that the city editor does not hesitate about throwing the first stone at the woman taken in adultery, while the business manager receives and publishes a column of special notices which are but cunningly devised traps for the unwary?

But this, as I say, is a matter that can scarcely be handled here, and I refer it with my compliments to the Society for the Suppression of Vice.

But there is another count in the indictment, and perhaps the greatest of all; I mean the publicity given to private affairs; the intrusion of the newspaper into family matters. Why, if I quarrel with my wife—if that were possible—must the city editor think it his duty to have me interviewed on the subject? Why, if a man marries someone to whom somebody else objects, must it be made the theme of a newspaper article? Why, because Mr. Brown lives in retirement and chooses to keep his shutters closed, must his quiet be broken into and the reason asked for his monasticism? Of what interest to the public is it that Mr. Jones has changed his faith; or that Mr. Robinson was deceived in the character of a fraudulent count; or that Mr. Smith has doubts concerning the paternity of the newly arrived heir? Just think yourselves, of how many cases of friendship spoiled; of rest destroyed; of families broken up; of hard feelings engendered, which you know of, or have heard of, that have been brought to the unwarranted publicity of private affairs. Are any of you pleased that the Sunday issues of these papers publish illustrations of your young daughters going into and coming out of the bath on the sea-shore, with their limbs exposed as far as possible and they presented in *pose* or sitting in equivocal positions, with the full name of each young girl so depicted in letters so large that one who runs may read? I will answer for you. You are outraged and insulted; but you are powerless for fear of another and more insulting return.

Let the editor who thus writes and acts and outrages decency and common sense, and the publisher who thus promulgates this disgraceful and deleterious style of literature, change places, and he and his family become the victims for the nonce, and see if the new position would be agreeable to him. There are men even in the press who can laugh right heartily at the mishaps of another; who look despondent when their own coats are dusted, and who weep scalding tears when their own skin is lacerated.

The press is a mighty power I know, but it has no more right to pay domiciliary visits than has the Governor of this State or the pound-master of Petaluma. Let the papers correct public abuses, and I say, "God speed to them," and every sensible man in the community will echo this wish. But let them continue in the arrogant assumption that their's is the right to make every private citizen tremble before the vision of type and the "largest circulation," and they will find that the time will come when in the selection of twelve men, good and true, there will not be found one who will not *jump* at the chance of putting his opinion on record. I say the interviewer possesses *no* rights which anyone is bound to respect; and when he knocks at the door of a private residence, let the inmates recollect that every man's house is his castle and he has the right to protect it from invasion, in any way that to him may seem best.

It is true, we may well be proud of the marvelous improvement that has marked the mechanical and news-getting departments of these wonderful institutions, the newspapers, but we should hang our heads in shame, if the nations of the earth should ask if these banners of blood and filth that flutter in million folds over our land every

morning are set out to mark the great victory of the "freedom of the press."

I might bring before you a mass of evidence to show that public attention is being rapidly awakened to the necessity of a press-purge.

Happiest sign of all, the more respectable papers themselves are condemning; severely condemning sensationalism. It was only yesterday, that in taking up a New York magazine the following paragraph caught my eye:

"Familiarity with crime brutalizes, and this is one reason why the ghastly reportorial enterprise which enlarges upon every detail of a frightful murder, and the consequent trial and disposal of the murderer, is so deplorable a feature of modern newspaper work, and the reporter is not to blame."

The life of the newsgatherer is not altogether a very pleasant one, although there are some, who from ignorance of the subject, think otherwise. He furnishes matter for publication; but he has not the slightest authority over its subsequent fate. That all rests with the editors-in-chief or the city editor as the case may be. If it is given to the public, it is because its publication is endorsed by the highest authority in the editorial room; if it is rejected it meets its fate under the same auspices.

Absolutely and *entirely* the reporter is relieved of *all* responsibility. But you readily can see who is responsible.

Again, a writer in an issue of the *Argonaut* has devoted much space to a criticism of contemporary journalism, and one passage ran so parallel with what I have already written that I present it to you:

"The danger that lurks in modern sensational journalism," says this writer, "is not so much in the manipulation of public affairs as in its intrusion into private life. Here it is that its pernicious activity is seen. There is no complete reparation when a false charge is made against a man in the public press. The stain cannot be wiped out even by a retraction. Reports of public meetings, observations on public affairs, comments on public officers, stand on a different footing. The public are rightly presumed to have an interest in such matters, and even though the reports may be false the law refuses to punish the publisher unless it is proved that he was actuated by malicious motives. But when the sanctity of private life is invaded, and the domestic scandal dragged forth to the public gaze, an outrage is committed. It is simply a pandering to a morbid taste for sensation bred and fostered by the press. The false charge travels upon the wings of lightning, while the refutation takes a seat on the back of a tortoise."

And now let us see what Frank Leslie has to say in the issue of September 20, 1894, on "Newspaper License:"

"For something like twelve years past there has been, in New York especially, and in the rest of the country also, a marked tendency toward the expansion of the daily newspaper, and sheets which formerly were four and eight pages are now twelve and twenty-four pages in size. If this expansion, without increasing the cost of the paper to the public, had been effected without lowering the literary and moral standard of the newspaper press it would have been a public benefit, but unfortunately the enlargement in size and the increase in matter have been in many cases at the sacrifice of quality for quantity. Even the most dignified of our daily papers do not hesitate nowadays to indulge in gossip unworthy of a village sewing-society, and to retail scandals with which the public has no concern whatever. We put up with this bad condition of things because we are indisposed to meddle with the freedom of the press, even though freedom is stretched into license and passes far beyond the bounds of decency.

The men who make the objectionable dailies are fully aware of the fact that their journals treat of subjects which had much better be left alone. They defend themselves on two grounds, neither of which, we think, are tenable. They say that the papers are vulgar and coarse because the public prefers vulgarity and coarseness. They say that they serve a good public purpose in printing details of scandals in private life, because such publications are a wholesome deterrent. There is so little in the latter claim that it is entirely overbalanced by the harm that is done when stories are told that are not true, and that put the stigma of disgrace and notoriety upon innocent persons. Newspaper managers of a certain class appear to take it for granted that a man who is high in official position, or who is prominent in fashionable society, or who has acquired or inherited great wealth, has no right whatever to privacy in his domestic affairs. They therefore print about the family life of such men, stories, which should find no place in any decent publication. If a man and his wife in high position have any difference of opinion and temporarily disagree, the sleuth-

hound reporters are put upon the trail, and columns of scandalous gossip are forthwith given to the world. The heartlessness of such publications is worse even than the vulgarity. Think of the wrong that is done to the children of the couple whose domestic affairs have become the subject of newspaper sensation and comment. The children have not offended, but they, entirely innocent, are the worst sufferers. Public men, rich men, are none the less human because of their wealth or official station. They feel and they suffer as others do, and they have private rights which no one is justified in invading. When married people make their affairs public by going into the divorce court it is quite another thing.

Now as to the public requiring that the daily papers should be indecent. We do not believe there is anything at all in this excuse on the part of the newspapermen. It is entirely refuted by the fact that the most prosperous weekly journals and monthly magazines are scrupulously clean and free from either gossip or scandal. If the public appetite for filth is so great that the morning and evening papers must soil their pages to gratify it, why should the public require entirely different matter for weekly and monthly reading? We have too much respect for the public to believe that any prepondering number want filth at all; we have so much respect for own manhood that if we believed so poorly of the public as these newspaper managers say they do, we should retire from the field and choose some calling in which success could be achieved with entire propriety."

I might strengthen what I have said with other equally pertinent citations, but these must suffice.

The mission of the press is a noble one. But the mission of the newspaper of to-day is often most degraded. And even with the charge (somewhat) of stultification staring me in the face, I say the daily newspaper of to-day is no better or worse than the community in which it is published. It is thoroughly and completely representative in that you sustain it, support it and enrich it, while you turn your backs on the journal that is decent, honorable, and respectable, and with a fair modicum of ability and intelligence; and this *you do from abject fear*, and I say you, because you are part of the citizenship here to-night and representative of those of your class and association that are not here; that our papers have at times worked wonders, that they have restrained men from wrong doing, that they have wisely shaped public policy, I cheerfully admit. I do more than this; I honor the papers for the nobility of enterprise displayed; for their status as educators; and for the fearlessness of their criticisms. But I contend that the papers of to-day are nullifying these admirable characteristics, by the display of wicked and mischievous qualities. It is as though in cleaning out the Augean stables, they had covered themselves with the filth they were removing. The people of San Francisco generally, but particularly its business men, have expended millions of dollars, in chimeras of the editorial room; and without a shadow of benefit in return, excepting to the newspapers prompting the expenditure. The newspapers aforesaid have been redundant in suggestions that have been absolutely useless, and have succeeded in bringing cruel destruction to the interests of the city in their train. Now, I will tell San Francisco as a municipality, and California as a state, and her citizens as business men what in my judgment they need, and that is, an honest, conscientious, truthful and independent press. They want a newspaper that will be fearless enough to represent San Francisco, without the interchange of barter. They need a newspaper not dependent upon blackmailing propensities or its advertising patronage for success. It needs a newspaper, which, when its advertising columns are used for announcement of trade, commerce and general business purposes, carry no editorial comment with their publication. They need a newspaper that will expose wrong-doing in all places; even if those who are its advertising patrons suffer under the castigation of those controlling it. They need a newspaper that will treat all patrons alike, "nothing extenuating or setting down aught in malice." *And that will not invade the sanctity of private life.* They need a newspaper that in order to sell a few more of its issues will not soak its columns in lye. It needs a newspaper that will protect its interests and the good name and fame of the people most deeply interested in such a journal. It needs a newspaper that

will not malign and slander women, or attack, libel, and insult men, that its conductors cannot use for their own criminal purposes. It needs a newspaper that will not give the sickening details of an abortion for breakfast, a horrible murder for lunch, and a vile seduction for dinner. It needs a newspaper that will not, by implication even, endeavor to make it appear that all our young girls are incipiently bad, and all our young men full-fledged roues. It needs a newspaper that will not try to make it appear that the community is a band of metropolitan thieves and scoundrels and unfit for the society of man, or beast. It needs a newspaper that can sustain itself on its circulation, until its steadfastness of purpose in the right direction will bring it the richest and fullest support.

This is what is needed and what particularly San Francisco needs, and money expended in that direction would return to its people an hundred fold. There are those who talk about people being priest-ridden and all that sort of thing, but the people of San Francisco are being ground into the very dust to-day, under the trampling hoofs of a rough-shod daily press, and yet in the face of it, the sufferers under such a brutal regime continue to suffer, although the avenue of escape is just as plain and clear before them as the noon-day sun. Fear restrains them.

And right here I will illustrate the truth of what I have said by reading the following from that sprightly weekly publication, the *New York Life*, whose mission in life seems to be the exposure of the faults and foibles of mankind. This is a scene taking place before the Cadi, and reads in this wise:

"Mustapha," said the Cadi, "what is that din without the gate? By the nether garments of the prophet, but the Kaffir shall suffer unless his cause be just. Let him be dragged before me."

Mustapha disappeared, returning with a prosperous-looking merchant, whose wilted collar and disarranged four-in-hand showed that he was suffering from internal emotion or internal alcohol.

"Wuat is it?—thou son of a slave! why didst thou afflict our ears with thy wretched wailing?"

"Mercy, sublime highness," replied the man; "but I have a daughter—"

"So have I," interrupted the Cadi, "forty or fifty; but I don't go about the city wailing about it."

"Allah be praised, your highness, and may your tribe increase. But my daughter was of fair reputation, and lived as prudent maidens should. Yesterday, though—and may his grave be defiled—an unbeliever, a son of a Jew, did print in which he calleth a newspaper, a tale which hath made the young men and other maidens to avoid my daughter, and my friends and neighbors to eye me askance. And so will no man take my daughter to wife, and I shall have no descendants to rise up and call me blessed. Ashes be on my head! Woe is me! Ya-a-a."

"Shut up;" said the Cadi. "Was the tale true?"

"In no word, your highness. My daughter has been a good maid and prudent, but by printing such a story the unbeliever doth sell more of his papers."

"Hast thou brought suit against the man?"

"No, your sublimity, for the man is powerful and has a pull with all the Cadis of the country. And if I did, the men wise in the law whom I have employed would have beggared me."

"Why hast thou not gone to the enemy and given him a good thrashing?"

"Because, your highness, he hath a gun and is surrounded by hired minions, who would quickly bounce me down the elevator-shaft."

"Mustapha," said the Cadi, "go and drag this wretch before me. But stay. Tell me, slave, hast thou ever bought any of the papers this man hath sold?

"Yes; oh, lord of wisdom," replied the merchant.

"And hast thou read in them tales of the wrong-doing of other men's daughters?"

"Yes, your highness."

"And hast thou not advertised thy wares in this paper?"

"I have, oh, fountain of justice."

"And for these papers, that thou might read of the misfortune of others, thou hast paid many piastres, and for thy advertisements thou hast paid him many shekels?"

"It is true, oh, source of all knowledge."

"And thereby hast furnished him with the wherewithal to live in luxury and to print more lies. Mustapha, take this foolish merchant without the gate, and then before the people administer forty strokes of the bastinado upon the bare soles of his feet, so that the people may learn wisdom. Justice must be done. Allah, be praised, for there is but one God, and Mohammed is his prophet!"

San Francisco's daily press has been the real stumbling-block to its progress and prosperity, and will continue to occupy that

position, so long as the papers in question are in the hands of corrupt commerical manipulators. Do you expect for a moment, that those who are seeking homes, where they may establish themselves and families and make a business, and a living for themselves, or those who are affluent in every phase of financial life, desirous of securing a residence, where climatic influences present such advantages as they do here and hereabouts, will seek San Francisco and the state generally when the metropolitan press is a constant warning that those *who do come here* seeking a local habitation and a name, leave all hope behind?

Why, fellow-citizens, if I had the inclination which I thank God I have not, and the money which I regret I have not, and could establish daily newspapers in the principal cities of the country, I could complete the ruin of California and certainly of San Francisco, by not writing a line editorially myself, nor permitting anyone else to do so, but by simply republishing each day articles from the daily papers of San Francisco in which the absolute rottenness and shame of everything Californian is set from one year's end to the other, showing conclusively that neither the state nor the city *were* fit for a local habitation or a name.

I am a friend of the railroad. I always have been and make no concealment of the fact. I let everyone else think as they see fit on the proposition.

My judgment is whatever antagonisms may exist, if any, against the railroad, the preponderance of them are the creation of those who are placed in the capacity at times where they are permitted to represent the company. It is not those who are the fearless friends of the railroad that should be ostracised on the ground that the people will not tolerate them, because they are friends of the railroad, and therefore in lieu thereof select those wrapped in cimmerian darkness in order to conceal their own identity. It is a mistake. The people admire and will trust those who possess the courage of their convictions and give full expression to the faith that is in them, even though it may resolve itself into friendship for the railroad. The people admire an open friend of the railroad, although they may not fully agree with him, rather than one who skulks for fear he may be found out. A concealed friend is infinitely more dangerous than an open foe; the former I thoroughly despise; for the latter I have the highest admiration. I would trust the latter in the dark; while I would distrust the former, even though he stood in the full glare of Edison's grand combination of light, as he might steal an opportunity in which to wink. I say to those in authority in the management of the railroad, change your policy in the respect to which I have referred, and when you find a true, loyal and unflinching friend stand by him, with all the strength and recognition at your command, and let your enemies be relegated into darkness and consequent obscurity. One open friend is worth a million of lip service acquaintances, and the result will be, where now you meet antagonisms you will establish the strongest and most lasting and substantial friendships. In other words, turn your back on false advisers, get in touch with the people, and pay no heed to those who illy advise you in the hope of personal gain and self-aggrandizement. Take completely and thoroughly the conduct and control of your own affairs into your own hands and deal *directly with the people*.

I am not here, however, to advocate or defend that institution or speak of its merits or demerits. I am in favor of every corporation, business man, institution, society, combination, and association whose efforts tend to increase the importance and dignity of San Francisco and of the state and further their progress, prosperity and permanency. If I see a new building going up in the city I am rejoiced in the fact that it will add to its substantiality and importance. If I hear the Palace Hotel and our other great caravanseries are overflowing with guests I am pleased at the prospects of returning business, or if I know the Union Iron Works have received an order for another government vessel I am delighted at the prospect for more work for our artisans, mechanics and laboring men, or in other words I take inexpressible pleasure in seeing everthing in the city and state thoroughly

prosperous. I only allude to the railroad now from the fact that certain of the daily press have pertinaciously charged that it has been a great injury to the city and state. I say if the railroad lived to be as old as Methuselah, it could not do a shadow of the injury done to the city of San Francisco and to the state, as has been done by the daily press, by the unpardonable course it has at all times pursued.

And now that we are on the subject, I ask your permission for a few minutes' time in which to say something relative to the railroad.

In the year 1872 before the completion of the railroad the whole assessed value of the real property in the state was $176,000,000. This was about two-thirds its value, adding the one-third would give about $264,000,000 as the real or maket value. As for instance in Salinas, Monterey county. Before the railroad entered that valley, land was worth $1.50; now it is worth $6 per acre. On completion of the road, land values began immediately to move upward, till in 1893 the assessed value of real property was $1,071,000,000, adding one-third to find the market value, gives $1,606,600,000, showing an increase in the market value of the real property of the state of $1,194,000,000 during the railroad period. Since its completion the railroad, according to published reports, has transported 2,600,000 through passengers, at a saving over the cost by the old routes of the same number of passengers, of $247,000,000. It has saved to local travellers on the cost of the same amount of travel by the method previously employed, of more than $65,000,000. The farmers have received from their frut crops over $5,000,000 more than they would have received without railroad service to give an eastern outlet to their crops. The railroads have saved to shippers of freight over $100,000,000 on the cost of moving the same freight by methods formerly in use. These figures show some of the fruits of the enterprise that first crossed the Sierras with the iron horse. The railroad has added three-fold to the value of real property and made no man poorer, while making thousands wealthy. It has made travel over the mountains and through valleys, a pleasure where before, at three times the present cost, travel was only undertaken from necessity and accomplished with the utmost tax of strength and patience. The railroad has reduced the time from New York to San Francisco from twenty-four days to less than five days. The value of this time to the 2,600,000 passengers carried has not been less than $100,000,000. In the attacks of the press and politicans upon the railroad would it not be fair and right to take into consideration the benefits received, and would it not be better for the press to unite with the railroad in securing immigration for the state, instead of driving it away by the issuance of false statements?

The condition of the daily press of San Francisco is no different to-day than it has always been; its disease is not sporadic but chronic. Now this satanic press of San Francisco is howling with delight at the prospect of a new road, that will cripple what it terms the "octopus;" but I say, but for the purchasble press of San Francisco there would have been no "octopus," as the people would have controlled the railroad, and not those now controlling it; and *I* know just what I am talking about. The paper I edit was the *only* paper published in San Francisco that advocated and supported the construction of the Central Pacific Railroad. All the dailies were purchased to fight the enterprise and prevent its success. In the interests of the people? Not much! but altogether in in the interest of the California Steam Navigation Company, the California Stage Company by the Henness Pass route, the the Placerville stage line, from that point to Virginia City; the telegraph company, that knew the construction of the road meant other telegraph lines in connection with the railroads; and in the interest of the express company and all other lines of travel. There is no florid word painting in this. *It is history.* The purchased press at that time said the road was a swindle and would only go as far as Dutch Flat, hence they called it the "Dutch Flat Swindle." They did everything in the world to prevent the building

of the road, and they lied by day, lied by night, and lied for the very lust of lying, in regard to the enterprise referred to. An effort was made to secure subscriptions to the stock of the road almost at its inception from the merchants, business men and capitalists of San Francisco, but the purchased press of San Francisco opposed it in every way. There was no "octopus" then. There were no rates to denounce, because there was no necessity to fix rates. There was no road, but still the battle was waged against the road. Stanford, then President of the Central Pacific, requested me, through the secretary, Mr. Bailey, to assist him in procuring subscribers to the stock from among the merchants, business men, shippers, capitalists, and others of San Francisco. I did so. This was in 1862. We opened an office in Platt's Hall, on the corner of Montgomery and Bush streets, where Wakelee's drug store now stands. Mr. Bailey returned to Sacramento and left me in charge. We received *one* subscription from San Francisco, and *only* one. That was from a Frenchman, for ten shares. We never saw him before the subscription and he has never been seen since. At the end of twenty-two days, without a single subscription from San Francisco, the books were closed and removed to Sacramento. But for the press of San Francisco that city could have owned the Central Pacific Railroad, and hence the so-called "octopus." Now they are delighted with the competing road, and so am I. They, because they think it will injure the present system of transportation, and I, because I think it will eventuate to the best interests of the state. I welcome the new road with open arms and an hospitable reception. I wish there were as many competing roads as could be gotten into the state, because I believe they would enhance the progress and prosperity of the state, and aid the business of those already in the business of railroad transportation particularly. The satanic press need not lay the flattering unction to their souls that they are entitled to any credit for the construction of the Valley road; on the contrary, quite the reverse; but it is due entirely to CLAUS SPRECKELS, who made up his mind that actions spoke louder than words and gave with his sons, JOHN D. and ADOLPH B. SPRECKELS, seven hundred thousand reasons for the faith that was in him. To the earnestness, vigor, substantiality and progressiveness of CLAUS SPRECKELS will we be indebted for the Valley Road, should it be built, and not to the press of San Francisco, because to them and they alone are we indebted to the fact, competing railroads were not built twenty years ago—again I say, I hail the competing road which Mr. Spreckles has been the lever that has set it on its onward journey and hope and trust that it is but the beginning of the end. But I tell him now just so soon as his Valley Road, constructed as it is said, in the interest of the people, is in operation, the newspaper press will denounce himself and his colleagues as everything infamous and scoundrelly, and the people for whom he has labored will plunge a knife into his railroad back and turn the blade around so that he may bleed to death, unless fares and freights satisfy the meanest capacity.

And now another point to show you that the press has been the real "octopus," is the the Goat Island proposition. The railroad desired it for terminal purposes. It was simply a useless rock. But the press would not have it. The journal I edit was the *only* one in the state that advocated the cession of the rock in question. The press triumphed and the railroad did not get it. One paper said it was required for harbor defences, whereas a fleet could lay off seven miles at sea, and shell San Francisco, and the daily press, out of existence. Had the railroad succeeded in its purpose there would not have been less than $30,000,000 expended up to this time on Goat Island in improvements of every kind, and all taxable in the city and county of San Francisco. The line of the railroad would have been to the Island, and there would have been ferry carriage every five minutes. But the press deprived San Francisco of the advantage, scattered her trade and commerce, built up Porta Costa and Oakland, opened up channels through which the business of San Fran-

cisco was drawn from her, in order to enrich other sections; and then like cuttle-fish that discolor the water surrounding them in order to conceal their whereabouts, cry out "octopus" in order to hide their abject crime. You may cut off the head, tail and feet, and skin a fox, but the fox is there still; and coo the daily press ever so sweetly, the "octopus" they represent is still intact.

It is not the railroad, not the telegraph companies, not the steamship companies, not the navigation companies, not the trusts of trade, finance or commerce, that is the "octopus" to be dreaded in California, but that which has well nigh destroyed and is still engaged in the destruction of the interests of California generally and the great metropolitan city particularly, is the "octopus" of the daily press of San Francisco.

Another thing the daily press of San Francisco has done. It has given that city ADOLPH SUTRO for Mayor, who is known as the chief of social, business and political fakirs, a man who thought so little of the city of which he owned one-tenth of its land, that he did not become a voter until just in scant time to enable him to be elected to a political office. He is mayor of San Francisco and his incumbency is a disgrace to that city. He is a gift as I said before of the daily press, and he, like they, is always howling against what he and they call the "octopus"; and yet when the first chance came to assist in killing that fearful animal, he, in a cowardly manner, plead the baby act, and whined out, "I have no money for such enterprises," and then stole a street from the city for his own uses and purposes; and in the direct line of the "octopus," for his own railroad profit and business.

The decent and patriotic men of both great political parties are now combining their efforts in order to induce the leaders to hold the coming national Democratic and Republican conventions in the city of San Francisco. But right here a serious dilemma arises, which must not only be seriously contemplated, but must be positively removed before the object in view is achieved. That dilemma is the Mayor of San Francisco. Four years ago or more O'Donnell was defeated for Mayor, for the reason as was stated, his professional character was such, he would be unfit to receive President Harrison. But the Oakland people, after Harrison did come to the state, though that anybody was fit to receive him. It was said O'Donnell was an abortionist. That may be, I do not intend to discuss the proposition at this time, if he was he had no advantage of Sutro, who is a civic abortion. For more than one reason, I say and proclaim that Mayor Sutro of San Francisco is unfitted to to receive any delegation of decent people coming from abroad into California and particularly into its metropolitan city. I say his ownership of the Cliff House should d—n him to all eternity in the heart of every father and brother in San Francisco.

Now, let us imagine him as Mayor of San Francisco receiving the learned men of the land, Senators, Congressmen, ex-high officials, would-be Presidents, members of the present and former cabinets, Governors, and ex-Governors of States, the cream of the editorial and reportorial talent of the nation and so on down and along the whole line of civic and military greatness. And now he speaks: Great God defend us! "I am the Mayor of "San Francisco, you bet. I'me the fellow "that fights the octopus. See! I beat "O'Donnell, I did. I'me the fellow that "wrote the proclamation to the New York "*World* in which I said everybody in San "Francisco was a thief but me. Oh! but "my old partner could tell a tale. But, "gentlemen, I welcome you here. Our citi-"zens, our judges, our supervisors, our pub-"lic men are all corrupt, thieving, degraded "scoundrels, but—down with the octopus! "Come in, gentlemen, and take pot luck "with us. I have arranged with the tele-"phone company so that should any of our "thieves undertake to steal your grip sacks, "a tinkling bell will show you where the "thief is. All your money, bonds and jew-"els, you send to Sutro Heights, where "they will be well taken care of. And when "you see them again you will see them. "Down with the 'octopus.' "

Either the proclamation of Sutro, which I have referred to above was a lie, or it was

the truth. If a lie, he should be drummed out of the city, if the truth, by what right do people endeavor to secure conventions to be held in a city, resting under a criminal indictment, found and promulgated by its own chief executive officer; the mayor of San Francisco? And this thing is what the daily press of San Francisco gave to San Francisco.

And now not satisfied with SUTRO as Mayor, an effort is being made by and through the legislature, to secure the appointment of a smelling committee, to grope through the alleys and slums and sewers of the city, in order to see if the corruption and rottenness to be found there, is not as white as an angel's wings in comparison to the people of that city, whose excrements created the corruption of the alleys, slums and sewers aforesaid. Do the people of the state demand this? No! Do the people of San Francisco demand it? No! But who does? I will answer. A speculative newspaper wishing to make a market for its wares and not content with its self-assumed monarchy, desires to put on the power and authority of a despot, even though it costs San Francisco its life and vitality. Maybe a smelling committee would not be so bad if it had the power to investigate the offices of the daily newspapers of San Francisco in order to find out among other things how much money was paid in the Florence Blythe and other cases, coming before the courts where fees were taken by newspapers for and against. *I know what I am talking about* and this monarch that as deftly as Herrmann could compress two rabbits into one, emerges into a despot and says, "If you Senators and Assemblymen do not vote at my dictation for a smelling committee. I will brand you, each and everyone of you,"

Gentlemen, you are not here as free agents, you are not here to perform the duties of your respective positions in accordance with the oath you each took and subscribed to, you are not here to carry out the behests of your several constituences, but you are simply here as a band of Marionettes made to dance as a speculative newspaper plays the music. In the interest of San Francisco? No! In the interest of the state? No! But simply, entirely and alone in the interest of the exchequer of the newspaper referred to. Do I blame the newspaper in question? No! no. But I do blame the people who in their stolid ignorance allow themselves to be tied to the chariot wheels of this monarch, as it drifts into despotism, while its victims are hidden from view in the poisonous dust, the revolutions of those wheels send up into the air. But you Senators and Assemblymen, selected as you have been by the people, you represent as being upright, honest, intelligent and loyal to the trust reposed in you, you men of families, upon whose escutcheons there is neither blot nor blemish, that have always maintained honorable lives, are to be branded as criminals, dishonest, corrupt and infamous, and yourselves and families disgraced, because you see fit to vote as you think best, and refuse to bend the pregnant hinges of the legislative knee at the feet of a speculative newspaper that thrift may follow fawning in the shape of a favorable notice in the editorial column.

If San Francisco, as the great metropolitan city of the Pacific Coast, is so low in the scale of cities, so degraded, so shameless, so corrupt, so undesirable by reason of her crimes and rascality, so unfit for decency and respectability, then I say, let her go out of business as a municipality, put the shutters in place and screw them up tight. But I say the slanders, libels, misrepresentations and abuse heaped upon San Francisco are lies, lies told with malice *prepense*, and upon a coin basis. I say San Francisco will bear favorable comparison with any city in the Union—aye, in the world. Her growth has been like a romance, rapid, substantial and commendable. It is true she has lost not less than $300,000,000 since she was established by the course pursued by the daily press, in attacking and opposing everything presented for her advancement unless they were taken in as partners, but by the indomitable will and energy of her people she has surmounted this drawback and her progress has been onward and upward. In the elegance of her buildings, public and private, her schools and colleges, her care of the sick and unfortunate, in her great libraries and picture galleries, in her magnifi-

cent hotels, her churches and places of worship; in her charities more munificent and timely than those of any city we know anything about, the more frequent the demand upon her the more liberal in her donations; in her business marts and houses, and the magnificent domain which has enlisted the highest encomiums of the representatives of the nations of the earth, whose great growth, beauty and rural fascinations, made more interesting and nearer to the hearts of the people by the one whose life went out like a flower cut down by the chilling blast of death, whose memory will live so long as shrub, tree, plant and the flowers grow and blossom for the pleasure and comfort of the people in whose interest he labored night and day, but destined to realize only in part the fruition of his hopes and ambition. So long as Golden Gate Park is a living factor in the history of San Francisco the name of W. W. Stow will be immortal.

Can San Francisco be as vile, low, degraded and infamous as the satanic press of that city would wish the people abroad to believe, in the face of the fact that there are upwards of three hundred ministers of God in the line of apostolic descent in that city daily appealing to the Almighty, the ever-living God; the Ruler of Heaven and Earth, for mercy and forgiveness, and that He would cause the light of His countenance to shine upon the people and bless and uphold them; and prostrating themselves at the foot of the Great White Throne ask of the great Giver of all good that the days of San Francisco and her people might be long in the land. What if all these ministrations of these messengers of God have failed, are we to understand by it? That the teachers of the Divine Word in San Francisco are also corrupt, infamous and degraded, as well as the people to whom they preach, and therefore, they too being wicked the prayers of the wicked availeth not? Think of it! Out of the forty thousand people that worship God in the churches and houses of prayer in San Francisco, there is not a sufficiency of leaven to purify the whole lump.

How long ago is it since Claus Spreckels, as public-spirited upright, and honorable a man as there is in the state, was held up by a press in San Francisco as everything vile, corrupt and infamous, and so incensed and enraged were his children at the insults and libels heaped upon him and his family by reason thereof that one of the sons took the act of reparation in his own hands and the jury trying the case acquitted him. Since then, and now, there has been no change in the manhood of Claus Spreckels, and yet the same press that denounced him then, extols him now.

How long ago is it since Louis Sloss, as pure and honorable and respected a man as God's fair sun ever shone upon, was held up to the criticism of the people in a San Francisco press as a man who would deliberately and with malice prepense despoil a former partner. This was done not once or twice but several times until by some mysterious power the attacks ceased. Then because he happened to coincide on a public matter with the press that had so infamously attempted to defame him they extolled him to the skies, published his portrait, and said he was, as he really was, *sans peur sans reproche.*

Louis Sloss was born an honest and good man, and he has never changed one jot or tittle in that respect in the gradations of life from his birth to his honored old age.

Have you forgotten the tremblor that visited Vacaville and Winters some time since? I take it you have not, and that being the case you will recollect the publications that were made by the daily press relative to its extent and damage. Cuts were published showing the ravages of the disaster; not in the one or two issues but in so many that popular acclaim went up that it should cease, and it did cease after it had affrighted the world. The people abroad not knowing much relative to the geography or topography of the state, made up their minds that the whole state had been enveloped and lost in the cerements of an earthquake. Telegrams were sent to California from abroad, the senders begging to be told of the terrible effects of the disaster, the number killed, and the loss of property; and if there was any prospect of the city of San

Francisco ever being rebuilt—and for this we are to tender obligations to the daily press.

This little diversion cost San Francisco and the State, not less than $20,000,000.

You all recollect the Kearny riots. During that season I had the honor to serve for two weeks as telegraph clerk in the office of the late lamented Wm. T. Coleman, whose good deeds in behalf of San Francisco and the state should be forever green in the memory of the people. He was chosen as the leader at that time as he had been before to put down the insurrection. His office was in a building on Union Square. Do you know where Kearnyism originated? If you do not I do. It was in the editorial room of a daily newspaper of this city, the pabulum supplied by a reporter by the name of Hull. The destruction that ensued, for which the city was liable, cost the municipality $266,000; and frightened capital, dating from Kearnyism, witndrew not less than $140,000,000, which has not returned to San Francisco and never will, as it has been invested elsewhere—the responsibility of which the daily press must bear. You may think these figures are exaggerated. On the contrary, they are within the absolute truth.

Does it not, therefore, in the natural course of events seem reasonable to reasonable minds that those who intended to set their faces this way would, on catching a view of the picture presented for their investigation, look at it with averted eyes, not daring to encounter the horrors there depicted.

Is there a day that passes that the world is not told by the daily press, that San Francisco is but a den of thieves and scoundrels; that property is insecure; the tenure of life at a discount, that crime stalks abroad unmolested, that virtue is criminal, and that criminality is the highest test of virtue? And when this is the daily pabulum. what is the reader to think! Simply, that which we have enunciated elsewhere that the newspaper is entirely representative of the people in whose midst it is published and supported. Who is it that stands aghast at this condition of affairs so far as the press is concerned? Is it the layman, who is simply a reader? No! But it is the newspaper man himself who wonders that the layman tolerates it. It is the decent newspaper man, who asks, when will things cease, and what is the remedy? It seems there *is* a remedy for every other disease save the disease in newspapers and I am sufficiently an optimist to believe that great desideratum will be evolved in the near future. At least let us hope.

Again I say, what San Francisco needs is an honest press. Will she be able to secure it? Yes! If the people are to themselves, not otherwise.

We hear much of the purity of the press, but, so long as our daily papers continue to devote the bulk of their news to criminal matters, so long as they insist upon making themselves the avenues of unnecessary publicity, so long as the reporter is forced to do the work of Paul Pry, so long as fathers have to pocket the morning papers lest their daughters' eyes would grow round over the salacious details of some spicy story, so long as the murderer and highwayman are elevated into heroes, so long as honest privacy is not respected, so long as personal attacks are indulged in, slanders without foundation in name or fact are published in order to "get even" or to "roast" some one who has offended, so long as the best interests of the state are malinged, abused and injured from motives political, and of spite and gain, so long as libel and detraction are the rule and not the exception, in order to give the boys something to cry out so that a few more papers may be sold—then I say, so long will the editor be an Ishmaelite—his hand against every man, and every man's hand when the chance comes against him. But enough of this.

The star of San Francisco will never set. The brightness of her days are but a shadow of her future light, beauty, progress and prominence. The golden gate of her prosperity has scarcely opened; but when the time arrives that the splendor and magnificence of that within, is fully displayed to the admiring gaze of the world, then, indeed, will the deception practised

upon the people by the false statements of a press that should have defended her at all times; without money; and without price; be thoroughly and fully realized. The star of San Francisco will never set. Her mission in the line of civic triumphs is not for a day but for all time. The glory and elegance of her metropolitan form have only just commenced to impress themselves upon those who admire strength, beauty and endurance. Her manifest destiny is as plain to those who reason as that light succeeds darkness, and that destiny is, that as the years roll by she will take her place undisputed, and by the right of all those attributes that conduce to make a city great, commanding and influential, in the front rank of the cities of the world. The star of San Francisco will never set. But she will stand on the western slope robed in the lovely garments of her civic station, meeting unflinchingly the bright rays of the sun, as it opens and adorns the day, coming into direct competition with its dazzling beauty, her figure erect, her power displayed in the courage of the position she assumes, a civic crown resting upon her magnificent brow, upon which are inscribed the words, "San Francisco! now and forever, the Queen City by the Sea."

Medical Experts.

INVESTIGATION

OF

INSANITY

BY

JURIES.

Read before the Santa Clara Medical Society,

SEPTEMBER 4, 1877.

By W. S. THORNE, M. D.

SAN JOSE:
"THE PIONEER" PRINT, COMMERCIAL BANK BUILDING.
1877.

CALIFORNIA STATE

Medical Experts.

Mr. President and Gentlemen of the Santa Clara Medical Society:

In the almost infinite variety of human affairs there are possibly none more complex than those which are involved in adjusting the legal relations of the insane. And, certainly, no duty which the medical man is called to perform so tries his patience or tests his knowledge and his experience as the character of medical witness in Judicial investigations.

The points to which I particularly desire to call your attention to-night are the following, to-wit:

First.—The present uncertain position occupied by medical experts in California Courts.

Second.—The provision in our civil code which enables a person, who has been declared insane before a commission of lunacy, to demand a Judicial investigation before a Jury.

My own limited capacity, Mr. President, and the presence here to-night of older and more ex-

perienced members of the profession admonish me that my theme is ill-chosen, and whilst I feel that my effort is properly prefaced by an apology, I am likewise impressed with the conviction, that it is my duty and privilege to raise my voice, feeble though it be, against abuses which are alike derogatory to our profession and an injustice to society.

It is a confession no less mortifying than true, that medical experts, in California Courts, have no legal rights, and their testimony elicits neither respectable consideration nor carries with it authoritative weight. I assume these premises to be true, and if there is a medical man within the sound of my voice, whose experience as a legal expert in this State has been more fortunate, I shall unhesitatingly pronounce his case anomalous. Admitting then my hypothesis, let us inquire, if so we may, wherein lie the evils of which we speak and if possible their remedy.

Any person holding a diploma from a reputable school of medicine and engaged in the active practice of his profession, is in law an expert. In this capacity he may be summoned at any moment to testify to questions of fact, hypothetical or theoretical. The questions thus propounded to the medical witness are frequently complex in their nature, involve a wide range of inquiry, and necessitate on his part a just discrimination, extensive knowledge and large experience. Again, medical science is ever varying; it may be likened

to an uncertain stream that shifts its banks—restless and aggressive, the land-marks change, but the river's course is ever onward. Principles like the rocks left in its ancient bed, alone remain to mark its passage and reveal its work; accepted truths of to-day may be *un*truths to-morrow. Errors have been enunciated by Philosophers, have been sanctified by the Church, and promulgated by Priests, but have finally been overtaken by this same resistless stream of progress, and by it have been swept out of the world. Even so to-day our science is changing its foundation stones. Insanity is but just emerging from a complex labyrinth of metaphysical obscurities, and has taken its place in pathology as a physical disease. Physiological Chemistry has scarcely conned its alphabet, and its unknown literature, pregnant with marvelous truths has yet to unfold its treasures to us. Equally unexplored is the vast field embraced in the ætiology of diseases, the character of morbid germs and their mode of entry into the economy. Organic Chemistry is filling our libraries with its new facts and experiments. The imperative demand therefore of the medical expert is constant study. The exigencies of the position require, in justice to the profession, a thorough acquaintance with all that is old, and an equal familiarity with all that is new. The range of judicial inquiry often embraces the entire field of medical and surgical knowledge, as well as all their collateral branches. No obsolete

theory, no unborn or possible fact is too remote for searching investigation. Hypothetical questions, ingeniously framed, which include complex and unusual possibilities or specious probabilities, invite the attention, and tax the knowledge, the memory and the judgment of the expert.

Again, medical men are frequently summoned as experts by opposing counsel, between whom there is known to exist personal animosities or professional jealousies. The usual result is anticipated by the legal gentlemen. The doctors contradict each other; the lawyers are delighted, the jury puzzled, and the Court is disgusted with medical testimony. An advocate will not infrequently subpœna his medical friends to testify in a given case. Testimony thus elicited is of necessity biased by the personal influence of the attorney and the *ex-parte* statements of facts derived from the same source. The medical witness is thus led by a piece of legal *finesse* to rebut the evidence of the experts on the other side, which he would have unhesitatingly endorsed in the consulting room. The doctor has perhaps satisfied a little ambitious egotism—he has assisted the attorney to win his cause; but he has done so at the sacrifice of personal dignity, professional unity, and the respect of both court and jury. *Biased* expert testimony is a shame and a disgrace to our profession. It is infinitely baser and more ignoble than rank perjury, for perjury is often the child of fear, of hate, of avarice; but what language shall be found ade-

quate to characterize a student of science, enlightened by education and refined by gentle associations, who can so far forget his duty to himself and society as to prostitute his knowledge to so ignoble a purpose? Again, medical men, after graduation, are prone to neglect the systematic reading of new books and journals. Their reading is desultory, and as the increasing demand of professional duties press them for time, they come to rely more and more upon their own experience, with an overweening confidence as to its entire accuracy. Now, no sane man doubts the value of *individual experience.* As well might you deny the value of a single dollar because it is only one. "I have been in practice twenty years," exclaims a neighbor, "and I speak from experience; I am right!" True to the extent of that one experience for twenty years; but suppose twenty other observers, who have systematically recorded their experience for the same length of time—who are at least your equals in the profession and vastly your superiors in their opportunities for observation—should have met with results adverse to your own, would you not pause ere you ventured to assert the accuracy of your knowledge under oath in a public tribunal? The experience of one man, though of incalculable value, is as naught to establish the truth or falsity of a principle; observations must be numerous and widespread, least the inductions therefrom lead to erroneous conclusions. The most successful ovariotomist is he who has never lost a

case, but can it be truly said that he who has had but a single case, and saved it, is the man?

I will here venture the belief that the medical man whose testimony will carry with it the greatest weight, will be he, who, in addition to his own experience, can supplement it by the accumulated experience of many others, whatever be *his* age or however limited *his* experience. An eminent lawyer once remarked in my presence: "You doctors make bad witnesses. When asked by counsel, questions which no man can answer, why don't you confess your inability to do so?" I have often seen a medical witness floundering through an attempted definition of insanity—of mind and its relations to matter. Herbert Spencer begins his chapter on mind by declaring that we do not know, and probably never shall know, anything concerning mind. It is in nowise derogatory, therefore, to our intelligence, to admit the same unwelcome truth.

To recapitulate, then, the causes, as I understand them, of the merited discredit attending expert testimony in medico-judicial inquiries, are: *First*—A diploma and active practice constituting the only legal requirement for that position. *Second*—Inequality of professional acquirements; an inequality, I may remark, resulting from a difference of industrious habits in the later years of professional life. *Third*—Inharmony among professional men. These, I am persuaded, are the proximate causes of the ridicule and contempt with

which medical testimony is at present received in California courts. The remedies for the evil may be briefly stated to consist in: *First*—A united profession, determined to elevate the standard of medical education. *Second*—The formation of local medical societies for the interchange of ideas and harmonious intercourse, and the promotion of mutual improvement in medical and collateral science. *Third*—The establishment in the medical department of the University of California of a Chair of State Medicine for the benefit of those who desire to fit themselves for service in medico-legal investigations.

In concluding this part of my subject, I would venture to enjoin upon the medical witness that he should enter the court room as he would approach the bedside, a calm intelligence, untramelled by fear or prejudice, instigated by no ignoble purpose and inspired only with the desire to elucidate such questions as are propounded for his consideration, in a manner that shall accord with advanced science and the views of the most enlightened of his profession. The ancient injunction, "Thou shall not muzzle the ox that treadeth out the corn," appears to be pretty generally observed towards all kinds of animals, the world over, with the exception of medical experts, who do an amount of public treading at a rate of compensation inferior to that accorded to the time of a first-class shoemaker. With your permission I will relate an example illustrating the truth of this statement.

A murder has been committed; the defense set up insanity, and a judicial investigation is had, to determine the *mental* condition of the accused; six experts are summoned to assist in the trial; they are detained three days and a half; a bill for expert service is rendered the county, endorsed by the District Judge and the District Attorney, for an amount below the actual loss that each had sustained by absence from his practice, and the munificent sum allowed by the county for three and a half days service is fifteen dollars a piece. The legal obligations on the part of the expert to respond to the summons of the court is inexorable; but there is no corresponding obligation of the county to remunerate the expert beyond common witness fees of two dollars per diem. It would seem that the five dollars allowed in the case under consideration was a mere gratuity; and counsel on careful investigation have advised the experts that they can not recover the full amount of their claims.

Such, gentlemen, is the anomolous position of medical witnesses before the courts. Now, Mr. President, a physician's time is practically his capital, his stock in trade, if you please. Is not, therefore, this exercise of judicial authority, in effect, the appropriation of private property to public uses without just compensation?

If the courts of this county have the right to compel my attendance, as an expert, three days and a half at the rate of four dollars and twenty-eight cents per diem, it wonld have an equal right

to extend that attendance to fifty days, or a year, at the rate of $1,562.20. Now if my income be $1,000 per month, the county of Santa Clara has the legal right to appropriate to public uses $10.-438.60 of my money, my only redress being to supplicate the Legislature to restore, as a charity, what is mine by right.

The principle by which medical experts are forced to attend in courts of law is manifestly *unjust*, and demands immediate alteration by our next Legislature. The forced attendance of medical experts in courts of justice at a rate of compensation arbitrarily fixed, or withheld, is an abuse of power that finds no excuse in justice or necessity.

The citizen is thus virtually deprived of an inalienable right, for the security of which our forefathers yielded up their fortunes and their lives. Let the medical profession of the State of California see to it that the next Legislature pass an act empowering District Judges to allow extra compensation to medical experts summoned in criminal cases. The same provision can be made for the compensation of medical experts by the Legislature as provided in Section 271 of the Civil Code for the payment of short-hand reporters in criminal cases, which is as follows, to-wit: "In criminal cases, where the testimony has been taken down upon the order of the court, the compensation of the reporter must be fixed by the court, and paid out of the treasury of the county

in which the case is tried, upon the order of the court."

I now pass to the second part of my subject, relating to the trial of persons accused of insanity. Section 1763 of the "Code of Civil Procedure" of the State of California declares that "a person of unsound mind may be placed in an asylum for such persons, upon the order of the County Judge of the county in which he resides, as follows: First—The Judge must be satisfied by the oath of two respectable physicians that such person is of unsound mind, and unfit to be at large. Second—Before granting the order the Judge must examine the person himself, or if that be impracticable, cause him to be examined by an impartial person. Third—After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy." Section 1766 declares "That any person who has been declared insane, or the guardian, or any relative of such person, within the third degree, or any friend, may apply by petition to the Probate Judge of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state such person is then sane. Upon receiving the petition the Judge must appoint a day for hearing, and, if the petitioner request it, shall order an investiga-

tion before a jury, which shall be summoned and impaneled in the same manner as juries are summoned and impaneled in other cases in the Probate Court. On trial the guardian or relative of the petitioner, and, in the discretion of the Judge, any other person may contest the right of the petitioner to the relief demanded. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease." Such, Mr. President, are the latest enactments in this State respecting the examination and trial of persons alleged to be insane. The provisions to which I desire to direct your attention are those parts of Sections 1763 and 1766, which enable the person who has been adjudged insane, or any person within the discretion of the court, the husband or wife, the guardian, or any relative to the third degree, to petition the Probate Judge to order an investigation by a jury. Sir, I will premise my remarks on these provisions of our Civil Code by the enunciation of the following theorem: That if the provisions of our Code, relative to trial by jury of persons alleged to be insane, were hereafter to be applied in all cases, there would be no more commitments to our insane asylums in future, except raving maniacs, and the present inmates of those institutions, once restored to liberty, could never again be returned to them. Let us see if

the facts will prove the theorem. About the year 1873, one A. B., an intemperate and wealthy citizen of this county, was thought to be insane, and a guardian was appointed to take charge of his estate.

At the solicitation of friends he was placed as a pay patient in St. Mary's Hospital, in San Francisco. He remained there several months. When it became impracticable to retain him longer in that institution he was brought to San Jose. Not long after this event he was examined before a commission of lunacy, consisting of the County Judge and two physicians. He was pronounced insane by this commission and was ordered to be taken to the asylum at Stockton. At the suggestion of his wife he was released after a few weeks confinement in that Institution, but was not discharged as cured. He returned to his home, and soon after made application to the Probate Judge for the discharge of the guardian upon the ground that he was competent to manage his own affairs. A lengthy trial was had and a large number of medical witnesses were called, who testified that the Plaintiff was insane. The application to remove the guardian was denied. A few days subseqent to this event the new law, (Section 1766, Civil Code,) went into effect which allows a person who has been adjudged insane to have his restoration to sanity determined by a jury. A jury was impaneled and by consent of all parties a (sham) verdict was rendered declar-

ing him sane. About this time he made a deed of one-half of his property to his wife, in trust. Soon after this instrument was made, his conduct became so ungovernable, and as his family alleged, dangerous, that they made application to the County Judge to have him examined with a view of committing him to an Asylum. The examination was had before the County Judge and two Physicians, sitting as a court. The trial was lengthy and occupyed several days. A large number of medical and lay witnesses were examined, and the result of the inquiry was a declaration of insanity, and the order that the accused be taken to Stockton. A short time before this trial took place, this gentleman made and executed a second deed of one-half of the remaining property, to his wife. Immediately after he had been declared insane by the last commission, and before he was taken to Stockton, a jury was demanded to determine the fact of his restoration to sanity. This trial was contested by the family, and a large number of medical witnesses were called, including his family physician and the Superintendent of the Asylum at Stockton. The testimony of the medical witnesses was unanimously in favor of his insanity. Numerous witnesses, among the laity, however, were not wanting whose opinions flatly contradicted those of learned gentlemen, and the jury returned a verdict of sanity. A few months subsequent to the latter decision, this unfortunate gentleman began an action in the

District Court to have the second deed to his wife set aside, upon the ground that he was insane at the time of executing it. The judgment of the court was, that the deed be set aside upon the grounds as alleged in the complaint. Mr. President, we behold the transformation of the caterpillar into the butterfly and we marvel at the mysterious process of designing nature; but what a sluggard is nature when compared to the law! The law can metamorphose a human intellect from health to frenzy and from frenzy to health by the exercise of its resistless fiat. We read of the Arabian Knights and of Aladdin's Lamp, but the fantastic evolutions of this legal romance surpass them all. The same individual in the short space of two years, without apparent change in his mental state, so far as could be determined by physicians or friends, is thrice pronounced insane by as many commissions of lunacy, twice sane by two different juries and once insane by a District Judge, in order to annul a deed that was executed just prior to the verdict of a jury that declared him sane and therefore responsible for his acts.

From the fantastic inconsistency of the foregoing decisions, a disinterested person might be led to infer, that of all the *dramatis personæ* of this legal farce, the chief actor is the least liable to the imputation of insanity. It is instructive to remark that the learned judges who presided, had all, either separately, or in connection with a commis-

sion of lunacy, pronounced in favor of insanity—an opinion which was fully concurred in by medical men. But the efforts of learned and eloquent counsel, aided by public prejudice, mawkish sentiment, and the ignoring by the jury of all the expert testimony, determined the verdict as stated. I will not weary you with further details respecting jury verdicts in questions of mental capacity. They are so thoroughly farcical, that our judges do not hesitate to advise the friends to drop all proceedings when a jury is demanded. I will illustrate the statement by a few examples. It had long been apparent to the friends of D. V. that his mind was unsound. Some time since he became violent, loquacious, and obscenely *erotic*. He declared he was in frequent correspondence with the Emperor of Germany and his First Chancellor; that he owned large and valuable properties in this city, in which it was known that he had not the remotest interest; that he was the most extraordinary intellect the world had ever produced; that he represented in his own person, several different individuals, and other like absurdities. He was finally arrested for indecent exposure of person and taken to the County Jail. Whilst confined in this place, his wild incoherence and absurd statements convinced the most inexperienced observers that he was laboring under marked aberration of mind. A commission of lunacy was finally ordered, and the expediency of placing him in an asylum was unanimously determined. The patient disagreed

with this decision, and demanded an examination before a jury. A jury was not impaneled; the necessity was kindly obviated by a friend of the accused, a lumber dealer, who gratuitously informed the Judge that the man was not insane, because, forsooth, he could play a better game at cards than himself. It was not deemed necessary to further invoke the popular wisdom in this case, and the man was discharged. Ten years ago J. T., a wholesale merchant, was attacked with a nervous disorder which his physicians pronounced *spinal sclerosis*. Epileptic seizures came on subsequently. His mental powers became manifestly impaired, and he was ordered to the country. He became a patient of mine, and I attended him for several years. He would have attacks of a week's duration, during which he would never sleep. These attacks were accompanied by frequent epileptic fits and *clonic* convulsion of certain muscles. The condition of his mind at such times was wild in the extreme. He finally became violent towards his family, and unmanageable. His condition was generally that of exaltation. He was usually happy; always gaining victories over his enemies, of whom he had no lack. Although poor, he would talk of investments in real estate, and foreign travel. He would rise at midnight and order his attendant to take down the pictures from the walls; insisted that his wife was tired of him and conspired with others to poison him; call

for his meals to be served in the street, and would discharge his servant for imaginary insults or neglect. His general conversation was always childish and often incoherent. His faithful wife long struggled in her misfortune. At last, wan and pale, this feeble woman, bleached with the vigil of ten long years, sought relief from the burden she could no longer bear, at the hands of the law. When, at at last, he threatened her with violence, and spurned her, this wife, all trembling, and with many tears, prayed that, in charity to both herself and him, this husband should be placed in an asylum, and a commission was ordered to inquire into his mental state. During the examination he was assisted by counsel. The medical witnesses thought him insane, and the two physicians did sign, or were willing to sign, the commitment. The judge did not make the order, for it was stated that if made, a jury would be demanded. The wife had no means to defray such expenses, with the certainty of final defeat. The man was discharged. Section 1766 of the Civil Code was again an economy to the State. The law had thrust a madman back upon that hearthstone, where death was soon to lay its unwelcome tribute, and where the lament of a widow would soon mingle with the wail of her posthumous babe. Mr. President, these are facts. To some of you they are known. The man I speak of is a dangerous lunatic, with whom neither you nor I would sleep beneath the same roof. The law said to that poor wife, you

shall take this madman back to your hearth, or I will place you on the witness-stand; I will impugn your motives; I will insinuate a diabolical conspiracy; I will hint at poison; I will wring drops of agony from your pale brow; I will invade the sacred precincts of your domestic temple with court and jury; I will place your demented husband upon the witness-stand, that he may publicly accuse you, under the solemnity of an oath, of conspiracy, of infidelity, of debauchery, and the poisoned draught. All this will I do, in order that the legal fraternity may thrive; that justice may be defeated, and that the absurd and idiotic provisions of that crazy code, number 1766, may be fulfilled.

It is needless to multiply examples of this character. A skillful advocate, before a jury, can set at liberty the most dangerous lunatic in the State. Why is this? Why should not a jury composed of twelve impartial citizens, sworn to render a verdict in accordance with the evidence adduced before them, with medical experts to give opinions and testify as to matters of fact, with a learned judge to expound the law—why, I would ask, should not a court so constituted, present the very best and most perfect type of a tribunal to investigate those complex questions which arise concerning insanity? Learned jurists have said, and still assert, that any person, of common sense and common experience, is as competent to judge between a sound mind and a mind diseased as the

physician or alienist. Sir, this doctrine is repugnant to reason and common sense. As well might they claim that the same persons could as unerringly discriminate between health and disease in some other part of the nervous system—in the retina, the spinal cord, or the medulla-oblongata. The doctrine is utterly false, false in theory and false in fact. If any person, indifferently selected, is as competent as the medical man to judge of what symptoms indicate a diseased brain or nervous system, the same individual, under like circumstances, should be able to determine the symptoms of cholera, scarlatina, measles, or the symptoms of certain poisons. If the assumption of legal gentlemen be true, I would propose that in certain cases of doubtful diagnosis, a jury be empaneled to determine the real character of the disease. I deny the fact that jurymen selected from the laity are competent judges of the symptoms that indicate mental diseases. They are disqualified because: First—They lack the special study and experience by which alone they could comprehend and rightly interpret what they must see and hear. Second—*Juries do not render verdicts in accordance with the evidence.* It is, I believe, one of the esteemed privileges of juries to render verdicts utterly at variance with the testimony. Third—In trials of this character, juries are exposed to the eloquent wiles of counsel, who dwell with telling effect upon the probable persecution of the defendant; the loss of name and repu-

tation an asylum would entail upon him; conspiracy of family or others from criminal motives, and the hardship of isolation and confinement; finally, the introduction of a mass of testimony by interrogations somewhat as follows:

Question—Do you know the defendant?

Q.—How long have you known him?

Q.—Did you always consider him a sane man?

Q.—Have you often seen and talked with him of late?

Q.—Do you perceive any difference in his mental condition now and when you first knew him?

Q. Do you consider him insane at the present time? The answers to such questions, generally in favor of the defendant, will outweigh the opinion of the mightiest expert in the land, in the opinion of the jury. Yet the witness is not even asked if he has ever seen a case of insanity, if he were ever in an asylum, or whether he has any practical or theoretical knowledge of insanity or insane men. His recent relations with the accused may have been confined to mere daily salutations, or so cursory as to furnish no useful information as to mental health. The position of the accused also, is one that naturally excites in the minds of the jury the deepest sympathy. They can not, and will not, understand why a poor fellow who sleeps little, talks strangely, and facetiously styles himself General Jackson, should be sent away to an asylum, deprived of all that makes life dear to them. They do not believe the man insane; their

sympathies forbid so hard a verdict. Insanity is not a contract, a will or a deed. It is not a question of law; it is a question of fact. A fact often difficult to reach; a fact so closely related with physiological and metaphysical facts, so interwoven with the subtile threads of human intelligence, so artful in alluding apprehension, so dangerous in its results, that its judicial investigation can never be safely entrusted to those deficient in knowledge and experience. The custom of conducting these inquiries before juries, and in public places, should be discontinued. The exhibition of these God-stricken people and their mental deformities as a public spectacle, is a relic of barbarian inhumanity. Charity would fain cover them with the mantel of privacy. The practice of allowing loquacious attorneys to harangue the court, to brow-beat the medical witness and vex him with impertinence, to sneer at and gibe an expert whilst he elucidates some difficult point to a stupid jury, that has been raised by a yet more stupid attorney, is too despicable for respectful comment. What would you think of the proposition, Mr. President, to employ attorneys at law in a court composed of mathematicians? The question for investigation being one pertaining to their science. The very questionable utility of attorneys at law, under any circumstances, would not be found available in such a court. Neither ought they to find place in a court convened

for the solution of a problem quite as technical and far more abstruse. A question of physical disease involving nerve centers. I will here venture the opinion that the day is not far distant, when investigations involving insanity only, will be more expeditiously and justly determined without the assistance of either lawyers or juries. Lawyers tell us sir, that the merchant, the artisan, the laborer and the men who till the soil are as competent and intelligent judges of mental phenomena as the physician.

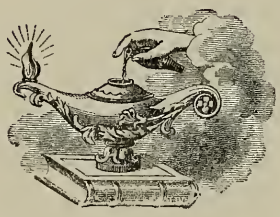
Let us examine, therefore, a few of the possible advantages which a medical man might possess over the laity in these investigations. The life study of the physician is man; man in his entirety, man as an animal, man as a rational entity, man in relation to himself, and man in relation to his physical surroundings—air, earth, water, organic and inorganic nature. As physicians we behold man in embryo; we often hold in the palm of our hands the germ that had been quickened into a living soul. We subject it to optical glasses and study its physical mysteries. We watch it at every period of its intra-uterine life. We bring it ripe for a more exalted stage of activity into this breathing world. We study its growth and mark its development. We foster and protect it, until we behold the structure complete—a living man. We observe this being in health, and we minister to him in disease. We look into his eyes, that we may read the temper and pressure of his brain.

We scan the optic discs, that we may measure the blood currents and detect unhealthful changes in the sensorium itself. We regard the face and note the emotions that sweep over it. We read upon its pallid surface the signs of agony, peace, fear, love, hope, despair, death. We read a history in the drooping of a lid, the compressed lip, the pinched nostril, or the tremor of a muscle. We feel the heart throb; we interrogate its action, we interpret its sounds. We place our ears upon the chest and tell you of life's breathing tide. We ask the blood its heat, and it records the answer. We bid the stomach, liver, kidneys, to bear us witness, and they respond at our bidding. As we behold the growth of mind with the body, so do we witness their decay. We study psychology in its various relations to physical disease. We see it infinitely manifested as physical decay encroaches upon its citadel. We study mental phenomena as the earliest precursor of physical death. We observe, study and interpret, mental phenomena as a most important aid to phyical diagnosis. We begin this study in our student days, and we never cease this careful observation of mental phenomena. It yields to the medical man a full measure of practical benefits in the treatment of human maladies. The physician's life, then, is chiefly devoted to the special study of phyiscal disease and mental manifestations in relation thereto. Will the jurist, yet assert that the man whose life is spent in the manufacture of shoes, the produc-

tion of wheat, and the growth of four-footed beasts, is as competent to estimate the value and interpret the symptoms of diseased nerve centres as he, whose life has been spent in their special study? This assertion of legal gentlemen is too absurd for argument. I will remark, by way of a possible explanation for this curious belief, that the most learned alienists of this age declare that in general, the lawyers and jurists are as ignorant of insanity as the laity itself. This statement accords with my own experience.

The special study which they direct to the investigation of a particular case, in which they are acting as partisans, tends neither to enlarge their views nor enlighten their understanding upon the subject. It certainly would do so, if they could persue the investigation with that careful and impartial spirit of inquiry that alone leads to knowledge. Erroneous tests of insanity have been incorporated into works of law, and these dogmas have become a part of the judicial mind. Practically ignorant of nervous disorders and the physiological knowledge necessary to comprehend them, and unused to contact with the insane, what wonder is it that the judicial ideas of insanity are as crude as the antiquated law which inspired them. The study of the mind is the study of the human body. He who declares that mind is a function of the brain alone, asserts an untenable theory. Every organ in the body ministers directly or indirectly to the manifestations of mind. *Mens sana in cor-*

pore sano is an axiom. Every organ in the body is connected by direct continuity of nervous structure with the brain. The mind, as a separate entity, exists only in the imaginations of men. It can only be studied in relation to its corelative matter, the body. He who most perfectly comprehends the latter must, of necessity, learn much of the former; and it is the special province of the physician to study both. As he is the custodian of the diseased body, so, likewise, is he the ablest minister to the mind diseased. Physicians should be both judges and jury in questions involving mental derangement. Our present Commission of Lunacy is a sufficient guarantee of honest, intelligent and just decision. If any particular doubts arise, more experts can be summoned; and should there still be doubts, it is ever safe and practicable to delay proceedings whilst the accused is kept under observation.

The provisions of sections 1763 and 1766 of our civil code, respecting the examination of persons alleged to be insane, before juries and assisted by counsel, should be repealed. Such an act would meet the approval of every legal gentleman and jurist whose opinion I have been able to obtain at this time. In common justice to medical men, whose time and knowledge are so indispensable in medico-judicial investigations, a provision should be made for their extra compensation, similar to that in section 271 respecting short-hand reporters

in criminal cases. Thanking you, Mr. President and gentlemen, for your respectful attention, I will close, with the hope that the profession of the State will lend its generous efforts to correct our present system of expert service, and the trial by jury of person held to be insane.